

72 Am. Jur. 2d State and Local Taxation § 712

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

John Bourdeau, J.D., Romualdo P. Eclavea, J.D., Janice Holben, J.D., Alan J. Jacobs, J.D., Sonja Larsen, J.D., Jack K. Levin, J.D., Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., and Eric C. Surette, J.D.

Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

1. In General

§ 712. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2750

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 60 to 80](#) (Complaints for refund of taxes)

The obligation to pay taxes is purely statutory.¹ Public policy requires that all taxes be paid promptly when due.² Every citizen has a duty to pay the taxes properly assessed against one's property.³ This duty is continuing.⁴ It is incumbent on a landowner to be knowledgeable about the assessment on one's property and diligent to make sure that taxes are paid.⁵ Payment alone discharges the obligation for taxes, and until payment, the State may proceed by all proper means to collect the tax.⁶

States may have a "pay first, litigate later" principle with regard to disputed taxes,⁷ and a statutory requirement that a disputed tax be paid when due must be accompanied by a right to maintain an action to recover the taxes paid.⁸

Until it is determined that an entity is qualified for tax-exempt status, it is obligated to pay taxes.⁹

CUMULATIVE SUPPLEMENT

Cases:

Trial court should not have awarded additional interest to be repaid by property owner on price and taxes paid at tax sale over and above that claimed by tax sale purchaser's special asset manager in his affidavit, following its declaration that sale and recorded sale deed were absolutely null; ex parte e-mail from purchaser's attorney, which was neither attached nor submitted into evidence, showed that award of additional interest was calculated upon aggregate figure, i.e., entire amount claimed by manager, instead of method specified by state constitutional provision governing annulment of tax sales, and purchaser's method of calculation resulted in award of compound interest that violated provision. [LSA—Const. Art. 7, § 25\(C\)](#). [Cititax Group, LLC v. Gibert](#), 176 So. 3d 625 (La. Ct. App. 4th Cir. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Millennium Park Joint Venture, LLC v. Houlihan](#), 241 Ill. 2d 281, 349 Ill. Dec. 898, 948 N.E.2d 1 (2010).
- 2 [Cota v. McDermott](#), 73 N.D. 459, 16 N.W.2d 54, 155 A.L.R. 1271 (1944); [Wyoming Building & Loan Ass'n v. Mills Const. Co.](#), 38 Wyo. 515, 269 P. 45, 60 A.L.R. 418 (1928).
As to methods of collection and enforcement, see §§ 752 et seq.
- 3 [Wells Fargo Bank, Minnesota, N.A. v. Com., Finance and Admin., Dept. of Revenue](#), 345 S.W.3d 800 (Ky. 2011), as corrected, (Aug. 25, 2011); [Tondre v. Garcia](#), 45 N.M. 433, 116 P.2d 584 (1941).
Ad valorem taxes are mandatory. [Miller v. Covington Development Authority](#), 539 S.W.2d 1 (Ky. 1976).
- 4 [Atascosa County v. Atascosa County Appraisal Dist.](#), 990 S.W.2d 255 (Tex. 1999).
- 5 [Rains v. Teague](#), 377 So. 2d 924 (Miss. 1979).
Real property owners are charged not only with knowing that property taxes are due annually but also with ascertaining the amount of taxes due and timely paying them. [Turnberry Investments, Inc. v. Streatfield](#), 48 So. 3d 180 (Fla. Dist. Ct. App. 3d Dist. 2010).
- 6 [State v. Evans](#), 79 Utah 370, 6 P.2d 161, 84 A.L.R. 766 (1931).
- 7 [Chodos v. City of Los Angeles](#), 195 Cal. App. 4th 675, 125 Cal. Rptr. 3d 694 (2d Dist. 2011), review denied, (July 27, 2011); [Foster Foundation v. Gainer](#), 228 W. Va. 99, 717 S.E.2d 883 (2011).
- 8 [Maracay Thunderbird, L.L.C. v. Maricopa County](#), 224 Ariz. 385, 231 P.3d 389 (Tax Ct. 2010).
The practice of sending property tax bills to taxpayers who had pending appeals of their assessments does not violate due process since allowing taxpayers to pay less than the full amount of the tax assessed during the appeal process and providing for a refund, if appropriate, satisfy due process requirements. [Hooten v. Thomas](#), 297 Ga. App. 487, 677 S.E.2d 670 (2009).
- 9 [Friends of Shingle Springs Interchange, Inc. v. County of El Dorado](#), 200 Cal. App. 4th 1470, 133 Cal. Rptr. 3d 626 (3d Dist. 2011).

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72 Am. Jur. 2d State and Local Taxation § 713

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

1. In General

§ 713. Payment under protest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2781

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[Voluntary Payment Doctrine as Bar To Recovery of Payment of Generally Unlawful Tax, 1 A.L.R.6th 229](#)

Forms

[Am. Jur. Legal Forms 2d § 238:12](#) (Protest—Of tax payment)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 32 to 51](#) (Complaints for injunctive relief against enforcement or collection of property taxes)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 54 to 59](#) (Administrative petitions or demands for refund of taxes)

A taxpayer who questions liability for the tax assessed or the validity of the statutes or proceeding pursuant to which it was assessed must ordinarily pay under protest to lay a foundation for showing that payment was not voluntary.¹ Paying under protest and then filing an objection is an adequate remedy at law,² and a taxpayer's failure to follow a statutory protest procedure bars a claim for a refund.³ However, in certain circumstances, a court of tax appeals may have the authority to hear a request for a refund despite the taxpayer's failure to have paid the taxes under protest.⁴

Payment by a check that is dishonored for insufficient funds is not sufficient under a statute requiring payment as a condition precedent to challenging a tax assessment.⁵

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Footnotes

- 1 [Jaynes v. Heron](#), 46 N.M. 431, 130 P.2d 29, 142 A.L.R. 1191 (1942); [Regional Economic Community Action Program, Inc. v. Enlarged City School Dist. of Middletown](#), 79 A.D.3d 723, 912 N.Y.S.2d 301, 262 Ed. Law Rep. 570 (2d Dep't 2010), leave to appeal granted, 16 N.Y.3d 709, 921 N.Y.S.2d 189, 946 N.E.2d 177 (2011) and order aff'd, 18 N.Y.3d 474, 2012 WL 488067 (2012); [Cota v. McDermott](#), 73 N.D. 459, 16 N.W.2d 54, 155 A.L.R. 1271 (1944); [In re Elk Sewell Coal](#), 189 W. Va. 3, 427 S.E.2d 238, 81 Ed. Law Rep. 593 (1993).
- 2 [Millennium Park Joint Venture, LLC v. Houlihan](#), 241 Ill. 2d 281, 349 Ill. Dec. 898, 948 N.E.2d 1 (2010).
The purpose of a statute allowing taxpayers to pay disputed property taxes under protest and seek a refund is to furnish an adequate and sufficient remedy to the taxpayer and to warn the tax collector that the tax is claimed to be illegal. [Herky, LLC v. Holman](#), 277 S.W.3d 702 (Mo. Ct. App. E.D. 2008).
- 3 [Adams v. Friganza](#), 344 S.W.3d 240 (Mo. Ct. App. E.D. 2011), reh'g and/or transfer denied, (July 12, 2011) and transfer denied, (Aug. 30, 2011); [Metropolitan Life Ins. Co. v. Kinsman](#), 2009 SD 53, 768 N.W.2d 540 (S.D. 2009) (refund not available in declaratory judgment action in absence of protest).
- 4 [In re Dillon Real Estate Co., Inc.](#), 43 Kan. App. 2d 581, 228 P.3d 1080 (2010).
- 5 [W. T. Grant Co. v. Lindley](#), 50 Ohio St. 2d 7, 4 Ohio Op. 3d 37, 361 N.E.2d 454 (1977).

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

1. In General

§ 714. Notice of due date

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Some statutes require notice of the due date for paying taxes.¹ Placing a notice in the mail is prima facie evidence that the addressee received it.²

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Footnotes

- ¹ [River Garden Retirement Home v. Franchise Tax Bd.](#), 186 Cal. App. 4th 922, 113 Cal. Rptr. 3d 62 (1st Dist. 2010), review denied, (Nov. 10, 2010) (statutory notice and demand); [City of Boston v. Boston Port Development Co.](#), 308 Mass. 72, 30 N.E.2d 896, 133 A.L.R. 515 (1941); [Clark v. Duncanson](#), 1920 OK 289, 79 Okla. 180, 192 P. 806, 16 A.L.R. 315 (1920).
- ² [City of Boston v. Boston Port Development Co.](#), 308 Mass. 72, 30 N.E.2d 896, 133 A.L.R. 515 (1941).

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

1. In General

§ 715. Tax receipts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2764](#), [2765](#)

A tax collector is generally required to give a receipt to persons paying their taxes.¹ A receipt should not be issued until taxes are in fact paid.²

An authentic tax receipt is prima facie evidence that the taxes described in it have been paid and, in the absence of evidence to the contrary, is sufficient to justify finding that the taxes have been paid.³ A statute may make such a receipt conclusive evidence of payment.⁴

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Footnotes

- 1 [State v. Evans](#), 79 Utah 370, 6 P.2d 161, 84 A.L.R. 766 (1931); [Seward v. Fisk](#), 122 Wash. 225, 210 P. 378, 27 A.L.R. 1208 (1922).
- 2 [Eggleston v. Plowman](#), 49 S.D. 609, 207 N.W. 981, 44 A.L.R. 1231 (1926).
- 3 [People v. Evanston Ry. Co.](#), 323 Ill. 109, 153 N.E. 603 (1926).
- 4 [Guaranty State Bank of Sisseton v. Roberts County](#), 57 S.D. 515, 234 N.W. 35, 73 A.L.R. 148 (1930).

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

1. In General

§ 716. Certificates concerning condition of taxes against property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2764

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[Effect of certificate, statement \(or refusal thereof\), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273](#)

Statutes may impose on the county treasurer or other public official the duty of certifying to the condition of taxes on property.¹ Such a statute does not conflict with a constitutional provision prohibiting remitting tax obligations,² nor with a statute that taxes on real estate will be a perpetual lien until paid, although such a statute is susceptible to challenge on the ground of the legal consequence of actually extinguishing a tax lien.³ Accordingly, statutes requiring such certificates embrace not only the positive duty of certifying the taxes due but also the negative one of certifying that there are no taxes due or that the property is free of tax liens.⁴

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Footnotes

- 1 [International Paper Co. v. State](#), 380 S.W.2d 18 (Tex. Civ. App. Texarkana 1964), writ refused n.r.e., (Oct. 7, 1964).
- 2 [Amerada Petroleum Corp. v. 1010.61 Acres of Land, More or Less, Situate in Harris County, Tex.](#), 146 F.2d 99 (C.C.A. 5th Cir. 1944).
Such constitutional provisions are discussed in § 735.
- 3 [Burton v. City and County of Denver](#), 99 Colo. 207, 61 P.2d 856, 107 A.L.R. 564 (1936) (but holding that the statutes will be construed together if possible).
- 4 [Burton v. City and County of Denver](#), 99 Colo. 207, 61 P.2d 856, 107 A.L.R. 564 (1936); [City of Philadelphia v. Anderson](#), 142 Pa. 357, 21 A. 976 (1891).
As to reliance on such certificates, see § 778.

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

2. Persons Liable

§ 717. Taxes as personal obligation of or charge against owner

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2837

A tax on real property is ordinarily considered a charge on the property and not a personal obligation of the person whose property is assessed for the tax in the absence of a statutory declaration to that effect.¹ In some jurisdictions, however, a property tax is considered a tax on the person of the owner of the property, assessed on account of ownership, and although the tax is measured by the amount and value of the property and can be collected out of the property, it is nonetheless a tax on the owner and not on the property and becomes the owner's personal obligation.²

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Footnotes

- 1 [McIlroy v. Fugitt](#), 182 Ark. 1017, 33 S.W.2d 719, 73 A.L.R. 1223 (1930); [In re McMahon's Estate](#), 237 Iowa 236, 21 N.W.2d 581, 163 A.L.R. 720 (1946); [Commonwealth ex rel. Martin v. Stone](#), 279 Ky. 243, 130 S.W.2d 750 (1939); [New Jersey Highway Authority v. Henry A. Raemsch Coal Co.](#), 40 N.J. Super. 355, 123 A.2d 83 (Law Div. 1956); [Board of Com'rs of Big Horn County v. Bench Canal Drainage Dist.](#), 56 Wyo. 260, 108 P.2d 590 (1940).
- 2 [Equitable Trust Co. of New York v. Kelsey](#), 209 Mass. 416, 95 N.E. 850 (1911); [Carrier Lumber & Mfg. Co. v. Quitman County](#), 156 Miss. 396, 124 So. 437 (1929); [Wilberg v. Yakima County](#), 132 Wash. 219, 231 P. 931, 41 A.L.R. 184 (1925).

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XLVIII. In General

A. Obligation to Pay and Manner of Payment

2. Persons Liable

§ 718. Person obligated to pay

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2837

The duty of paying property taxes is primarily on the holder of the legal title to the property against which such taxes are assessed or the holder's legal representative.¹ Innocent purchasers are not liable for real estate taxes where they rely in good faith on county records that reflect that the taxes had been paid when in fact they had not.² A statute may impose individual liability on corporate officers and directors for debts incurred before forfeiture of the corporation's right to do business and its corporate charter but after the date on which a tax was due but not filed or paid.³ Both spouses are taxpayers when they own property by the entirety, and while neither incurs personal liability, failure to pay property tax has an identical effect on the entire interest of each spouse.⁴

The legislature may require payment of taxes assessed against real estate while privately owned but which remain unpaid when the State acquires the property for a government purpose.⁵

CUMULATIVE SUPPLEMENT

Cases:

Fact that taxpayer's petition challenging county's assessment of real property taxes included constitutional claim, that statute allowing automatic dismissal of petitions challenging assessment of real property taxes was unconstitutional, did not prevent automatic dismissal of taxpayer's petition based on taxpayer's failure to comply with statute; compliance with statute was

essential to preserve right to challenge tax assessment. [Minn. Stat. Ann. § 278.03\(1\)](#). [Johnson v. County of Hennepin](#), 915 N.W.2d 889 (Minn. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Tondre v. Garcia](#), 45 N.M. 433, 116 P.2d 584 (1941).
- 2 [Rottjakob v. Leachman](#), 521 S.W.2d 397 (Mo. 1975).
- 3 [Dae Won Choe v. Chancellor, Inc.](#), 823 S.W.2d 740 (Tex. App. Dallas 1992).
- 4 [Retz v. Mayor and Council of Saddle Brook Tp.](#), 69 N.J. 563, 355 A.2d 189 (1976).
- 5 [First American Bank and Trust Co. of Purcell v. Oklahoma Indus. Finance Authority](#), 1997 OK 155, 951 P.2d 625 (Okla. 1997), as corrected, (Apr. 3, 1998).

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

2. Persons Liable

§ 719. Person who may pay; right to reimbursement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2752](#), [2768](#), [2769](#)

Any person other than the owner may pay a tax on a particular piece of property if that person's rights would be injuriously affected by a sale of the property for taxes.¹ In furtherance of the policy of prompt payment of taxes, the law encourages payment by anyone whose property may be ultimately liable for the tax.² One who pays taxes for that reason may enforce reimbursement from the persons whose legal duty it was to pay the taxes.³

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Footnotes

- 1 [Richey v. Moor](#), 112 Tex. 493, 249 S.W. 172 (1923); [Tibbals v. Board of County Com'rs of Fremont County](#), 74 Wyo. 232, 286 P.2d 598 (1955).
- 2 [Tibbals v. Board of County Com'rs of Fremont County](#), 74 Wyo. 232, 286 P.2d 598 (1955).
- 3 [Bibbins v. Clark](#), 90 Iowa 230, 57 N.W. 884 (1894), opinion supplemented on other grounds on denial of reh'g, 90 Iowa 230, 59 N.W. 290 (1894); [La Paul v. Heywood](#), 113 Minn. 376, 129 N.W. 763 (1911); [700 Madison Partners, LLC v. Hubrecht](#), 48 A.D.3d 358, 852 N.Y.S.2d 105 (1st Dep't 2008) (tenant entitled to indemnification by landlord in accordance with terms of lease); [Vermont & C.R. Co. v. Vermont Cent. R. Co.](#), 63 Vt. 1, 21 A. 262 (1890).

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

2. Persons Liable

§ 720. Payment of tax under mistaken belief

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2768](#), [2769](#), [2779](#)

Some statutes allow a taxpayer to file an application for a refund of taxes that were not due on the taxpayer's property but were paid under mistake or error.¹ Sometimes, it is required that the taxes be paid under mutual mistake of fact² while elsewhere, an inadvertent payment of real estate taxes is a mistake of fact, which may be corrected even if the mistake was unilateral.³

Some courts hold, based on principles of restitution and unjust enrichment, that one who under the mistaken belief of his or her ownership of land pays taxes on it is entitled to maintain an action to recover compensation from the person benefited or to recover by way of a lien on the affected land.⁴ One who pays taxes on land while the title to the land is in dispute is entitled to reimbursement from the true owner.⁵ However, a person making payment who is not under a mistaken belief and does not have an interest in the property to protect does make the property owner one's debtor simply by voluntarily paying taxes on the property.⁶

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Footnotes

- ¹ [Dunn v. Sequa Corp.](#), 74 So. 3d 459 (Ala. Civ. App. 2011); [Adams v. Friganza](#), 344 S.W.3d 240 (Mo. Ct. App. E.D. 2011), reh'g and/or transfer denied, (July 12, 2011) and transfer denied, (Aug. 30, 2011).
- ² [Eltel Associates, L.L.C. v. City of Pontiac](#), 278 Mich. App. 588, 752 N.W.2d 492 (2008).
- ³ [Wood v. Board of County Sup'rs of Prince William County](#), 254 Va. 480, 493 S.E.2d 120 (1997).

- 4 [Brookfield v. Rock Island Improvement Co.](#), 205 Ark. 573, 169 S.W.2d 662, 147 A.L.R. 451 (1943);
 [Schleicher v. Schleicher](#), 120 Conn. 528, 182 A. 162, 104 A.L.R. 572 (1935); [Resolution Trust Corp. v.](#)
 [Dickinson Econo-Storage](#), 474 N.W.2d 50 (N.D. 1991); [Bundren v. Holly Oaks Townhomes Ass'n, Inc.](#), 347
 S.W.3d 421 (Tex. App. Dallas 2011), reh'g overruled, (Sept. 12, 2011) and review denied, (Mar. 9, 2012)
 (entitled to subrogation to the taxing authority's lien either by statute or express agreement); [Buckett v. Jante](#),
 316 Wis. 2d 804, 2009 WI App 55, 767 N.W.2d 376 (Ct. App. 2009) (claim for unjust enrichment).
- 5 [Brookfield v. Rock Island Improvement Co.](#), 205 Ark. 573, 169 S.W.2d 662, 147 A.L.R. 451 (1943).
- 6 [William Ede Co. v. Heywood](#), 153 Cal. 615, 96 P. 81 (1908); [Hallett v. Alexander](#), 50 Colo. 37, 114 P. 490
 (1911).

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

3. Medium, Tender, and Time of Payment

§ 721. Medium of payment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2761

Generally, taxes may be paid only in money.¹ The tax collector does not have authority to accept anything else in payment of taxes unless expressly authorized by statute.²

The question of what may or must be accepted in discharge of taxes rests with the legislature.³ The legislature may not, however, change the method of payment of a tax once it is levied.⁴

In the absence of statutory authorization, a taxpayer may not discharge his or her obligation by crediting the amount, with or without the consent of public authorities, on a judgment or other debt that the taxpayer holds against the public body.⁵ Some statutes specify when an offset may be taken against tax liability.⁶

A contract between a municipal corporation and the taxpayer, such as a public service corporation, by which the taxpayer is to render services equal to the amount of taxes assessed against its property, is valid when the contract is intended as a bona fide compensation for services rendered and not a cover for an exemption from taxation.⁷

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Footnotes

- 1 City of Enterprise v. Rawls, 204 Ala. 528, 86 So. 374, 11 A.L.R. 1175 (1920); Vial v. Paradis, 44 Idaho
157, 255 P. 643, 53 A.L.R. 191 (1927); Muldrow v. Texas Frozen Foods, Inc., 157 Tex. 39, 299 S.W.2d
275 (1957).
- 2 Eggleston v. Plowman, 49 S.D. 609, 207 N.W. 981, 44 A.L.R. 1231 (1926).
- 3 Leonard v. Earle, 279 U.S. 392, 49 S. Ct. 372, 73 L. Ed. 754 (1929).
- 4 Jaksha v. State, 241 Neb. 106, 486 N.W.2d 858 (1992).
- 5 Am. Jur. 2d, Counterclaim, Recoupment, and Setoff § 67.
- 6 General Motors Acceptance Corp. v. Director, Division of Taxation, 26 N.J. Tax 93, 2011 WL 1196753
(Super. Ct. App. Div. 2011), certification denied, 208 N.J. 337, 27 A.3d 950 (2011).
- 7 City of Winchester v. Winchester Waterworks Co., 149 Ky. 177, 148 S.W. 1 (1912).

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72 Am. Jur. 2d State and Local Taxation § 722

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

3. Medium, Tender, and Time of Payment

§ 722. Medium of payment—Payment by check

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2761

In the absence of a statutory requirement, tax collectors are not under an obligation to accept checks or drafts in payment of taxes, and a check or draft given for such a purpose, even if it is accepted by the tax authorities, does not discharge the tax until it is in fact paid.¹ The collector may refuse to accept checks in payment of taxes.²

The fact that taxes are usually or customarily paid by check does not give that procedure the sanction of law, and the taxpayer may not support a claim of discharge of liability on principles of estoppel.³ However, where the tax authorities mark a tax paid upon receiving the taxpayer's check and issue a receipt for payment, the public body is estopped from asserting failure to pay the tax against one who purchases and pays for the property in reliance on such a receipt.⁴

Where a check accepted in lieu of cash in payment of a tax is not cashed until sometime after the due date, the payment relates back to the date on which the check was received.⁵

A dishonored check results in failure of payment.⁶

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Footnotes

- 1 Vial v. Paradis, 44 Idaho 157, 255 P. 643, 53 A.L.R. 191 (1927); Kansas Amusement Co. v. Eddy, 143 Kan. 988, 57 P.2d 458, 105 A.L.R. 702 (1936); American Sur. Co. v. Hamrick Mills, 191 S.C. 362, 4 S.E.2d 308, 124 A.L.R. 1147 (1939).
- 2 Roe v. Roosevelt Water Conservation Dist., 41 Ariz. 197, 16 P.2d 967 (1932).
- 3 Vial v. Paradis, 44 Idaho 157, 255 P. 643, 53 A.L.R. 191 (1927); American Sur. Co. v. Hamrick Mills, 191 S.C. 362, 4 S.E.2d 308, 124 A.L.R. 1147 (1939).
- 4 Seward v. Fiskens, 122 Wash. 225, 210 P. 378, 27 A.L.R. 1208 (1922).
- 5 General Petroleum Corp. of Cal. v. Smith, 62 Ariz. 239, 157 P.2d 356, 158 A.L.R. 364 (1945).
- 6 As to the collector's liability for failure or delay in presenting the check, see § 779.
W. T. Grant Co. v. Lindley, 50 Ohio St. 2d 7, 4 Ohio Op. 3d 37, 361 N.E.2d 454 (1977).

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XLVIII. In General

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§ 723. Tender of payment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 72](#) (Complaint, petition, or declaration—Allegation—Tax collector's refusal to accept payment of property taxes)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 77](#) (Order—Directing tax collector to accept payment of real property taxes pending determination of validity of assessment)

To be good, a tender of payment of taxes must be for the full amount owed at the time.¹ Thus, a tender of the exact amount of tax delinquency, without including the amount of statutory penalties, is insufficient.²

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Footnotes

¹ [New Mexico Realty Co. v. Security Investment & Development Co.](#), 27 N.M. 664, 204 P. 984 (1921).

An offer to pay less than the amount due is ineffectual as a tender. [Stratton v. Del Valle Independent School Dist.](#), 547 S.W.2d 727 (Tex. Civ. App. Austin 1977).

As to payment of less than the full amount of the tax, see §§ 727 et seq.

2 [Bohler v. Callaway](#), 267 U.S. 479, 45 S. Ct. 431, 69 L. Ed. 745 (1925); [Rooney Vermont Associates v. Town of Pownal](#), 140 Vt. 150, 436 A.2d 733 (1981).

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XLVIII. In General

A. Obligation to Pay and Manner of Payment

3. Medium, Tender, and Time of Payment

§ 724. Payment by mail

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2760

Compliance is required with a statute authorizing payment of taxes by mail, including with regard to the envelope being properly addressed, postage prepaid, and bearing a post office cancellation mark dated on or before the due date, and delivery by a private courier service does not meet the statute's requirements.¹ A statute may provide that tax returns and payments bearing a metered mail stamp and no post office cancellation mark are deemed filed and received on the date when the return arrives rather than the date of the metered mail stamp.²

Other than under a statute of the type described above, the taxpayer is delinquent when a check for taxes is mailed on the final day for payment, but the tax collector does not receive it until the next day.³ A taxpayer may be liable for the full amount of the penalty imposed for a delinquency where, even though the taxpayer mailed the payment prior to the delinquency date, it did not reach the collecting authority until after that date through some negligence or default by the taxpayer.⁴

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Footnotes

- ¹ [Tenaska Frontier Partners, Ltd. v. Sullivan](#), 273 S.W.3d 734 (Tex. App. Houston 14th Dist. 2008).
- ² [Safeco Ins. Co. of America v. State, Com'r of Commerce and Ins.](#), 840 S.W.2d 355 (Tenn. 1992).
- ³ [McDowell v. Henry](#), 238 Ala. 663, 193 So. 108 (1939).

4 [General Petroleum Corp. of Cal. v. Smith, 62 Ariz. 239, 157 P.2d 356, 158 A.L.R. 364 \(1945\).](#)

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XLVIII. In General

A. Obligation to Pay and Manner of Payment

3. Medium, Tender, and Time of Payment

§ 725. Excuses for failure or delay in paying

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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The law does not recognize any excuse for failure of a property owner to pay promptly taxes that have been properly assessed against his or her property.¹ The failure to pay taxes will not be excused because they were levied under the authority of an unconstitutional statute where the persons taxed do not make known an intention to withhold payment on that ground.² Neither is the failure to pay taxes excused on the ground of the taxpayer's good faith belief or contention that he or she is not liable for the tax assessed.³ Legal disabilities such as minority or insanity do not relieve a property owner from the duty of paying taxes.⁴ A property owner is not excused from paying property taxes where the owner alleges that he or she inquired of the tax authority regarding the tax but fails to identify the person with whom he or she spoke, the specific terms of the inquiry, the terms of the response, and the authority of the person giving the response and fails to request a written ruling.⁵ However, a taxpayer who, upon making inquiry of a properly authorized tax official regarding tax liability, is given erroneous information may be excused on the basis of estoppel.⁶ Also, a taxpayer's failure to pay taxes may be excused where the taxpayer bases the failure to pay on an appellate court decision that held that the taxes were improper, and subsequent opinions adopted conflicting positions on the issue.⁷

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Footnotes

- 1 Wilson v. School Dist. of Philadelphia, 328 Pa. 225, 195 A. 90, 113 A.L.R. 1401 (1937); American Sur. Co.
v. Hamrick Mills, 191 S.C. 362, 4 S.E.2d 308, 124 A.L.R. 1147 (1939).
2 Wilson v. School Dist. of Philadelphia, 328 Pa. 225, 195 A. 90, 113 A.L.R. 1401 (1937).
3 § 746.
4 De Hatre v. Edmunds, 200 Mo. 246, 98 S.W. 744 (1906).
5 JLM Inc. v. Meehan, 43 Conn. Supp. 135, 649 A.2d 1 (Super. Tax 1993).
6 § 778.
7 Department of Revenue v. Anderson, 389 So. 2d 1034 (Fla. Dist. Ct. App. 1st Dist. 1980).

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XLVIII. In General

A. Obligation to Pay and Manner of Payment

3. Medium, Tender, and Time of Payment

§ 726. Presumption of payment from lapse of time

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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[Effect of certificate, statement \(or refusal thereof\), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273](#)

Although the statutes of limitation do not run against the State with respect to a claim for taxes unless expressly made applicable,¹ the common-law rule that lapse of time will raise a presumption of payment of a debt² may apply in cases involving payment of taxes,³ but there is authority to the contrary.⁴ The presumption of payment from the lapse of time is not a bar to the right of action but simply a rule of evidence affecting the burden of proof.⁵

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Footnotes

¹ [§ 767.](#)

² Am. Jur. 2d, Payment §§ 114 et seq.

- 3 [In re Ash's Estate](#), 202 Pa. 422, 51 A. 1030 (1902); [Graves v. Stone](#), 76 Wash. 88, 135 P. 810 (1913).
4 [Mills v. Henry Oil Co.](#), 57 W. Va. 255, 50 S.E. 157 (1905).
5 [Graves v. Stone](#), 76 Wash. 88, 135 P. 810 (1913).

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

4. Payment of Less than Full Amount of Tax

§ 727. Payment in installments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2760

Statutes may provide for the payment of taxes in installments¹ at the option of the taxpayer.² Municipalities may change the due dates of installments of property taxes to accelerate the municipalities' cash flow.³ In the absence of such a statute, taxes must be paid in full at one time, and the taxpayer may not tender a portion of the tax and demand a receipt.⁴ The tax collector may have discretion to accept part payment of a tax and credit it on the tax assessed unless prohibited by statute.⁵

Statutes that authorize or permit partial payment of taxes or payments in installments are constitutional.⁶ However, a constitutional provision against remitting or postponing a tax is contravened by a statute permitting payment of delinquent taxes in installments, thereby "postponing" payment.⁷

Observation:

Partial payment of a tax will not relieve the property assessed from a lien for the balance of the tax.⁸

Tax authorities may refuse to accept partial payment of delinquent taxes after the taxpayer failed to make payments in accordance with an installment agreement, rendering the agreement void.⁹ A county did not violate the implied covenant of good faith and fair dealing when it refused to continue to accept payments on property tax obligations and decided to foreclose on its tax lien, despite a purported installment payment plan, where the taxpayers were unable to pay current taxes, let alone delinquent ones.¹⁰

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Footnotes

- 1 [Chicago, R.I. & P. Ry. Co. v. Slate](#), 213 Iowa 1294, 241 N.W. 398 (1932); [In re Delinquent Real Estate Taxes in Ramsey County](#), for 1920, 155 Minn. 258, 193 N.W. 459 (1923); [Bridges v. Hurlburt](#), 91 Or. 262, 178 P. 793 (1919).
- 2 [State ex rel. Todd v. Thomas](#), 127 Neb. 891, 257 N.W. 265, 96 A.L.R. 1470 (1934).
- 3 [Consolidated Edison Co. of New York, Inc. v. U.S.](#), 10 F.3d 68 (2d Cir. 1993) (applying New York law).
- 4 [Richey v. Moor](#), 112 Tex. 493, 249 S.W. 172 (1923); [State v. Evans](#), 79 Utah 370, 6 P.2d 161, 84 A.L.R. 766 (1931); [Villeneuve v. Town of Underhill](#), 130 Vt. 446, 296 A.2d 192 (1972).
The entire tax is due and payable when committed to the tax collector. [Macioci v. Commissioner of Revenue](#), 386 Mass. 752, 438 N.E.2d 786 (1982).
- 5 [State v. Evans](#), 79 Utah 370, 6 P.2d 161, 84 A.L.R. 766 (1931); [Wyoming Min. Ass'n v. State](#), 748 P.2d 718 (Wyo. 1988).
- 6 [In re Delinquent Real Estate Taxes in Ramsey County](#), for 1920, 155 Minn. 258, 193 N.W. 459 (1923); [Morf v. Johnston](#), 173 Wash. 215, 22 P.2d 663 (1933).
- 7 [State ex rel. DuFresne v. Leslie](#), 100 Mont. 449, 50 P.2d 959, 101 A.L.R. 1329 (1935).
Such constitutional provisions are discussed in § 735.
- 8 §§ 790, 791.
- 9 [In re Tax Sale Pursuant to Real Estate Tax Sale Law of 1947](#), 8 A.3d 358 (Pa. Commw. Ct. 2010), appeal denied, 27 A.3d 1016 (Pa. 2011) (also noting that the statute permitting installment agreements applied only until the property was placed on the judicial sale list).
- 10 [Stone Bridge Farms, Inc. v. County of Columbia](#), 88 A.D.3d 1209, 931 N.Y.S.2d 449 (3d Dep't 2011).

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XLVIII. In General

A. Obligation to Pay and Manner of Payment

4. Payment of Less than Full Amount of Tax

§ 728. Payment of share of taxes on entire parcel

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2753

While there is some authority that the owner of an undivided part or a distinct portion of an entire tract of land under a single assessment may pay the tax on that part or portion alone,¹ elsewhere, one co-owner of an undivided interest may not generally pay a prorated portion of the taxes due and prevent a tax sale but must pay the outstanding amount in full.²

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Footnotes

¹ [State v. Evans](#), 79 Utah 370, 6 P.2d 161, 84 A.L.R. 766 (1931).

² [C & C Energy, L.L.C. v. Cody Investments, L.L.C.](#), 41 So. 3d 1134 (La. 2010).

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Part Ten. Payment and Collection

XLVIII. In General

A. Obligation to Pay and Manner of Payment

4. Payment of Less than Full Amount of Tax

§ 729. Payment of only some of separate taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2750

Where independent taxes have been levied against the property of a taxpayer, the taxpayer has a right to pay the full amount of any one tax without paying the others.¹ This right is not affected by statutes providing that all taxes levied by taxing agencies or districts must be collected by the same officer in the same manner and at the same time as county taxes and fixing a date after which unpaid taxes will become delinquent.² In such cases, where the taxpayer tenders some one or more of several taxes assessed and refuses to pay others upon the ground that they are illegal or that he or she is not liable for them, the taxpayer will not be held liable for interest and penalties on at least that part of the taxes tendered notwithstanding the collector's failure to accept them.³

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- ¹ [Tondre v. Garcia](#), 45 N.M. 433, 116 P.2d 584 (1941); [Milne v. Hess](#), 141 Or. 469, 18 P.2d 229, 89 A.L.R. 711 (1933) (this right may be enforced by mandamus); [Richey v. Moor](#), 112 Tex. 493, 249 S.W. 172 (1923).
- ² [Milne v. Hess](#), 141 Or. 469, 18 P.2d 229, 89 A.L.R. 711 (1933).
- ³ [People ex rel. Stuckart v. Lamb](#), 277 Ill. 584, 115 N.E. 720 (1917).

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XLVIII. In General

B. Collection

§ 730. Time for collection

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Statutes providing the time for computing and collecting taxes are usually deemed directory rather than mandatory because they are usually not for the taxpayer's protection.¹

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Footnotes

- ¹ [Village of Oakley v. Wilson](#), 50 Idaho 334, 296 P. 185 (1931); [Taxes in Hennepin County v. Baldwin](#), 62 Minn. 518, 65 N.W. 80 (1895); [State v. Fox](#), 133 S.W.2d 987 (Tex. Civ. App. Austin 1939), writ refused. As to time limits on enforcement proceedings, see [§ 767](#).

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XLVIII. In General

B. Collection

§ 731. Collection of taxes from estates

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2800

Taxes have the status of preferred claims against the estate of an insolvent although they do not necessarily have priority over all other claims.¹ When the estate of a deceased taxpayer is in court for administration, all taxes due and in arrears are preferred to the exclusion of all other debts of the decedent.²

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- ¹ [In re Harris](#), 1939 OK 147, 184 Okla. 459, 88 P.2d 372 (1939).
As to the priority of tax claims in bankruptcy, see [Am. Jur. 2d, Bankruptcy](#) §§ 376 to 381.
- ² [Thompson v. Henderson](#), 155 Md. 665, 142 A. 525, 58 A.L.R. 1213 (1928).

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Part Ten. Payment and Collection

XLVIII. In General

B. Collection

§ 732. Right to compensation for collecting taxes for other units of government

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2806

The right of officers of one government unit to compensation for collecting or disbursing the taxes levied by another unit is usually controlled by statutes that fix the compensation of public officers.¹ In the absence of a statute, no such right exists.² In the absence of a constitutional provision to the contrary, the legislature may compel a county to bear, without compensation, the burden of collecting the taxes levied by a drainage district.³ The legislature also may impose the duty on city and county officers to collect taxes for purposes other than county purposes and to do so with or without compensation for the expenses incurred.⁴

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Footnotes

- ¹ Board of Education of Cache County School Dist. v. Daines, 50 Utah 97, 166 P. 977 (1917).
- ² Drainage Com'rs of Mattamuskeet Dist., in Hyde County v. Davis, 182 N.C. 140, 108 S.E. 506 (1921).
- ³ Riverton Valley Drainage Dist. v. Board of Com'rs of Fremont County, 52 Wyo. 336, 74 P.2d 871, 114 A.L.R. 1093 (1937).
- ⁴ Board of Educ. of Granite School Dist. v. Salt Lake County, 659 P.2d 1030, 9 Ed. Law Rep. 1063 (Utah 1983).

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XLVIII. In General

B. Collection

§ 733. Recovery by one taxing unit of taxes collected by mistake by another unit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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An action for money had and received is the proper remedy for one municipality to recover from another tax money, which in equity and good conscience belongs to the former.¹

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Footnotes

¹ [Town of Balkan v. Village of Buhl](#), 158 Minn. 271, 197 N.W. 266, 35 A.L.R. 470 (1924).

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Part Ten. Payment and Collection

XLIX. Remission or Compromise of Claims for Taxes

§ 734. Generally

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West's Key Number Digest

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A.L.R. Library

[Power to remit, release, or compromise tax claim, 28 A.L.R.2d 1425](#)

A state legislature, or a political subdivision or officer when authorized by the legislature, may, when not restrained by the local state constitutional prohibitions, remit, release, or compromise claims for taxes.¹

The power to commute taxes is an incident of the power to exempt, and where the latter does not exist, the incidental power must be denied.²

A county may lack the authority to compromise back taxes once tax certificates have been assigned.³

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Footnotes

- ¹ [People ex rel. Devine v. Murphy, 181 Ill. 2d 522, 230 Ill. Dec. 220, 693 N.E.2d 349 \(1998\); Grundon Holding Corp. v. Board of Review of Polk County, 237 N.W.2d 755 \(Iowa 1976\); State ex rel. Property Appraisal Dept. v. Sierra Life Ins. Co., 90 N.M. 268, 562 P.2d 829 \(1977\); Matter of Joint Diseases North General](#)

Hosp., 148 A.D.2d 873, 539 N.Y.S.2d 511 (3d Dep't 1989); *City of Cleveland v. Limbach*, 40 Ohio St. 3d 295, 533 N.E.2d 336 (1988).

As to agreements to pay taxes in installments, see § 727.

2 *City of Dayton v. Bellevue Water & Fuel Gaslight Co.*, 119 Ky. 714, 24 Ky. L. Rptr. 194, 68 S.W. 142 (1902).

3 *Robinson v. Fremont County*, 744 N.W.2d 323 (Iowa 2008).

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72 Am. Jur. 2d State and Local Taxation § 735

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XLIX. Remission or Compromise of Claims for Taxes

§ 735. Constitutional or statutory restrictions

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[Power to remit, release, or compromise tax claim, 28 A.L.R.2d 1425](#)

There may be either express or implied constitutional¹ or statutory² limits on the power to remit or compromise taxes. Some state constitutions expressly forbid release or commutation of taxes³ except under certain circumstances.⁴

Provisions that require that taxation must be equal and uniform throughout the state and that all property must be taxed in proportion to its value,⁵ or prohibit the legislature from making gifts to individuals or corporations and from releasing or extinguishing any indebtedness of any person to the state or a municipality,⁶ prohibit a legislative act authorizing a release or remission of taxes that have become due.⁷ A remission or abatement of taxes is within the prohibition of a constitutional provision against exemptions.⁸

A statute providing that under certain circumstances delinquent taxes may be satisfied in full by the payment of a fraction of the amount originally assessed, classifying taxpayers into two classes, those who pay promptly and those who do not, and allowing a remission or discount to the latter, violates a constitutional provision that requires taxes to be uniform upon the same class of subjects because such a classification is unreasonable and arbitrary.⁹ Some courts have held that such statutes do not violate

provisions regarding equality and uniformity in taxation or those forbidding the remission or release of obligations owing the state or a subdivision¹⁰ at least where the statutes do not make the tax a personal obligation of the taxpayer.¹¹

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Footnotes

- 1 State ex rel. Matteson v. Luecke, 194 Minn. 246, 260 N.W. 206, 99 A.L.R. 1053 (1935).
- 2 City of Omaha v. Morello, 257 Neb. 869, 602 N.W.2d 1 (1999).
- 3 Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317 (1936); Jones v. Williams, 121 Tex. 94, 45 S.W.2d 130, 79 A.L.R. 983 (1931).
- 4 Jones v. Williams, 121 Tex. 94, 45 S.W.2d 130, 79 A.L.R. 983 (1931) (cases of great public calamity).
As to agreements to pay taxes in installments, see § 727.
- 5 New Jersey Bell Telephone Co. v. City of Newark, 136 N.J. Eq. 479, 42 A.2d 629 (Ct. Err. & App. 1945).
- 6 Federal Exp. Corp. v. Skelton, 265 Ark. 187, 578 S.W.2d 1 (1979).
- 7 Nathan v. Spokane County, 35 Wash. 26, 76 P. 521 (1904).
- 8 State v. Armstrong, 17 Utah 166, 53 P. 981 (1898).
- 9 State ex rel. Matteson v. Luecke, 194 Minn. 246, 260 N.W. 206, 99 A.L.R. 1053 (1935).
- 10 State ex rel. Anderson v. Rayner, 60 Idaho 706, 96 P.2d 244 (1939); Black v. Evatt, 138 Ohio St. 52, 19 Ohio Op. 555, 32 N.E.2d 843 (1941); Board of Com'rs of Big Horn County v. Bench Canal Drainage Dist., 56 Wyo. 260, 108 P.2d 590 (1940).
- 11 Board of Com'rs of Big Horn County v. Bench Canal Drainage Dist., 56 Wyo. 260, 108 P.2d 590 (1940).

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Part Ten. Payment and Collection

XLIX. Remission or Compromise of Claims for Taxes

§ 736. By officer of administrative body

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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[Power to remit, release, or compromise tax claim, 28 A.L.R.2d 1425](#)

Assuming that the legislature may authorize the remission or compromise of tax claims, in the absence of express legislative authority, neither a political subdivision nor an officer of the State or of such a subdivision has authority to remit or release a claim for taxes, either wholly or in part, or to compromise such a claim.¹ The principle that a municipal corporation has implied power to compromise claims against individuals² does not apply to taxes, and a municipality may not compromise tax claims without express statutory authority.³ Moreover, an attempt to confer on an administrative tribunal the power to adjust and compromise delinquent taxes may constitute an unlawful delegation of power.⁴ On the other hand, county officials may have discretion to compromise taxes or reduce interest and penalties due.⁵

CUMULATIVE SUPPLEMENT

Cases:

If, following a tax taking, the municipality has retained ownership of the tax title account, the collector can certify subsequent delinquent taxes to the tax title account, thus eliminating the need for the municipality to conduct another taking when it already has tax title to the property. [Mass. Gen. Laws Ann. ch. 60, § 61](#). [Tallage Lincoln, LLC v. Williams](#), 485 Mass. 449, 151 N.E.3d 344 (2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 [City of Louisville v. Louisville Ry. Co.](#), 111 Ky. 1, 23 Ky. L. Rptr. 390, 63 S.W. 14 (1901); [Petition of Auditor General](#), 204 Mich. 442, 170 N.W. 549, 2 A.L.R. 1526 (1918); [State ex rel. Donsante v. Pethtel](#), 158 Ohio St. 35, 48 Ohio Op. 3, 106 N.E.2d 626, 28 A.L.R.2d 1419 (1952); [Hamilton Nat. Bank v. Richardson](#), 42 Tenn. App. 486, 304 S.W.2d 504 (1957).
- 2 [Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 707](#).
- 3 [State ex rel. Donsante v. Pethtel](#), 158 Ohio St. 35, 48 Ohio Op. 3, 106 N.E.2d 626, 28 A.L.R.2d 1419 (1952).
- 4 [Richey v. Wells](#), 123 Fla. 284, 166 So. 817 (1936).
- 5 [Willow Woods Manufactured Homeowner's Ass'n, Inc. v. R & R Mobile Home Park, Inc.](#), 81 A.D.3d 930, 917 N.Y.S.2d 656 (2d Dep't 2011) (order prohibiting county officials from enforcing an oral real property tax abatement agreement not warranted).

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XLIX. Remission or Compromise of Claims for Taxes

§ 737. Discount or rebate for prompt payment

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A legislature may constitutionally allow a discount or rebate for the prompt payment of taxes¹ so long as the right to a discount is extended uniformly to all who desire to take advantage of it.² While allowing such a discount results in some inequality of burden, it does not invalidate the tax; rather, the inequality of results comes from the election of certain taxpayers to take advantage of privileges offered to all.³ However, a statute providing for the allowance of a graduated monthly discount where taxes are paid before the last month of the tax year is invalid as creating an exemption from taxation other than one permitted by a state constitution.⁴

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- ¹ [Board of Education of Louisville v. Sea](#), 167 Ky. 772, 181 S.W. 670 (1916); [Pinola v. Davis](#), 106 Pa. Super. 217, 161 A. 567 (1932).
- ² [Dade County v. Eastern Air Lines, Inc.](#), 207 So. 2d 13 (Fla. Dist. Ct. App. 3d Dist. 1968), opinion adopted, 212 So. 2d 7 (Fla. 1968); [Buchanan v. West Kentucky Coal Co.](#), 218 Ky. 259, 291 S.W. 32, 51 A.L.R. 281 (1927).
- ³ [Merchants' & Manufacturers' Nat Bank of Pittsburg v. Com. of Pennsylvania](#), 167 U.S. 461, 17 S. Ct. 829, 42 L. Ed. 236 (1897).
- ⁴ [Rowan Drilling Co. v. Sheppard](#), 126 Tex. 276, 87 S.W.2d 706, 102 A.L.R. 428 (1935).

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L. Penalties, Interest, and Costs

§ 738. Generally

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To induce prompt payment of taxes when due,¹ state legislatures may constitutionally impose penalties on taxpayers who fail to pay their taxes when due.² The amount of the penalty is a matter of legislative discretion.³

A court will uphold the imposition of a penalty unless it is contrary to law or otherwise erroneous.⁴ Where partial payment is made before a tax has become delinquent, the penalty must be computed on the amount of the tax remaining unpaid at the due date.⁵

A statute imposing a penalty for failure to pay a tax intends a civil and not a criminal sanction where it provides that the penalty will be assessed and collected in the same manner as the taxes are.⁶

A State may not impose different interest rates and penalties operative only in a part of the state because such a statute is unconstitutionally discriminatory.⁷

Tax statutes that impose penalties are strictly construed against the taxing authority and in favor of the taxpayer.⁸

The legislative intent behind a tax amnesty program is to afford taxpayers the chance to avoid harsher penalties, by paying all outstanding tax liabilities and interest by a certain date, thereby avoiding penalties, fees, and possible criminal action, while imposing increased penalties and interest on taxpayers eligible to participate but who failed to do so.⁹

If a bona fide attempt to pay a tax is frustrated by the person authorized to receive it, the taxpayer may not be adjudicated delinquent with respect to the assessment of interest or penalties.¹⁰

Unless the legislature has otherwise directed, interest and penalties collected on delinquent taxes go to the government entity entitled to the tax itself.¹¹

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Footnotes

- 1 William Wrigley, Jr., Co. v. Wisconsin Dept. of Revenue, 176 Wis. 2d 795, 500 N.W.2d 667 (1993).
- 2 General Petroleum Corp. of Cal. v. Smith, 62 Ariz. 239, 157 P.2d 356, 158 A.L.R. 364 (1945); Grossfeld v. Baughman, 148 Md. 330, 129 A. 370 (1925); Broadhead v. Monaghan, 238 Miss. 239, 117 So. 2d 881 (1960).
As to penalties under income tax laws, generally, see §§ 512, 513.
- 3 Texas Co v. Dyer, 301 U.S. 670, 57 S. Ct. 945, 81 L. Ed. 1334 (1937).
- 4 Benjamin v. Utah State Tax Com'n, 2011 UT 14, 250 P.3d 39 (Utah 2011).
- 5 State v. Evans, 79 Utah 370, 6 P.2d 161, 84 A.L.R. 766 (1931).
- 6 Paddock v. Siemoneit, 147 Tex. 571, 218 S.W.2d 428, 7 A.L.R.2d 1062 (1949).
- 7 Webster v. Williams, 183 S.C. 368, 191 S.E. 51, 111 A.L.R. 1348 (1937).
- 8 Conagra Poultry Co. v. Director of Revenue, 862 S.W.2d 915 (Mo. 1993).
- 9 River Garden Retirement Home v. Franchise Tax Bd., 186 Cal. App. 4th 922, 113 Cal. Rptr. 3d 62 (1st Dist. 2010), review denied, (Nov. 10, 2010).
- 10 Ex parte Four Seasons, Ltd., 450 So. 2d 110 (Ala. 1984); Foote's Dixie Dandy, Inc. v. McHenry, 270 Ark. 816, 607 S.W.2d 323, 21 A.L.R.4th 565 (1980); Burchardt v. Scofield, 141 Iowa 336, 117 N.W. 1061 (1908); Lutz v. City of Barre, 134 Vt. 379, 360 A.2d 72 (1976).
- 11 Community Redevelopment Agency v. Bloodgood, 182 Cal. App. 3d 342, 226 Cal. Rptr. 924 (2d Dist. 1986).

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L. Penalties, Interest, and Costs

§ 739. Negligence penalty

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2763](#), [2809](#), [3563](#), [3711](#)

A tax statute's inclusion of the term "if due to neglect" makes a finding of neglect pertinent to determining whether a penalty should be imposed.¹ A negligence penalty is appropriate when the taxpayer has failed to pay taxes owed, and a reasonable investigation into the applicable rules and statutes would have revealed that the taxes were due.²

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Footnotes

¹ [Wisconsin Dept. of Revenue v. River City Refuse Removal, Inc.](#), 2007 WI 27, 299 Wis. 2d 561, 729 N.W.2d 396 (2007) (further holding that a negligence penalty may not be assessed if the taxpayer established good cause for not paying the tax).

² [Benjamin v. Utah State Tax Com'n](#), 2011 UT 14, 250 P.3d 39 (Utah 2011) (noting that the taxpayers ignored advice).

A taxpayer did not act with reasonable cause in failing to file returns and pay taxes, warranting imposition of penalties, where it was not indicated that the taxpayer sought a letter ruling or other guidance from the department of revenue. [Geoffrey, Inc. v. Commissioner of Revenue](#), 453 Mass. 17, 899 N.E.2d 87 (2009).

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§ 740. Fraud penalty

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [Taxation](#)  [2763](#), [2809](#), [3563](#), [3711](#)

A fraud penalty is appropriate if there is a knowing or deliberate underreporting of income or the like but not where it appears that the taxpayer had some basis for claiming nonresident status and had produced most of the documents requested by the tax authorities.¹

While there is authority that the tax authorities have the burden of proving fraud, regarding taxpayers who willfully filed a false return with the intent to evade tax, by clear and convincing evidence, to support imposing a penalty,² it has elsewhere been held that the taxpayer has the burden of proof that a fraud penalty is improper.³

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Footnotes

- ¹ [Dreyling v. Commissioner of Revenue](#), 711 N.W.2d 491 (Minn. 2006).
- ² [Clark v. Iowa Dept. of Revenue and Finance](#), 644 N.W.2d 310 (Iowa 2002).
- ³ [Dreyling v. Commissioner of Revenue](#), 711 N.W.2d 491 (Minn. 2006) (burden met).

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L. Penalties, Interest, and Costs

§ 741. Frivolous filing penalty

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A taxpayer may be liable for a penalty for filing a frivolous return by asserting that tax liability was avoided using a scheme that did not have any basis in the tax law¹ or frivolously claiming that wages were not income.² A taxpayer bears the burden of showing that the authorities abused their discretion when imposing a frivolous filing penalty.³

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Footnotes

- ¹ [Bond v. Commissioner of Revenue](#), 691 N.W.2d 831 (Minn. 2005); [Buras v. Department of Revenue](#), 338 Or. 12, 104 P.3d 1145 (2005).
- ² [Buckley v. Wilkins](#), 105 Ohio St. 3d 350, 2005-Ohio-2166, 826 N.E.2d 811 (2005) (imposition of maximum penalty was not abuse of discretion).
- ³ [Buckley v. Wilkins](#), 105 Ohio St. 3d 350, 2005-Ohio-2166, 826 N.E.2d 811 (2005).

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L. Penalties, Interest, and Costs

§ 742. Interest

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West's Key Number Digest

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Delinquent taxes do not bear interest in the absence of an express provision of law imposing such liability.¹ However, since the power to exact interest on delinquent taxes is an incident of the power to tax,² statutes may provide for interest on delinquent taxes in the nature of a penalty for failure to pay taxes when due.³ An assessment of interest will not be overturned by a court unless the complaining party provides affirmative evidence demonstrating reasonable cause to abate it, or the tax collector has made an obvious error.⁴

Interest on an assessment runs from the due date in the year of the original assessment rather than from the date of a reassessment.⁵ While, ordinarily, interest is assessed from the date that the original return was due, the result is different if the taxpayer did not owe the taxes until receiving a refund.⁶

CUMULATIVE SUPPLEMENT

Cases:

Although the proceeds of any interest paid on delinquent tax debts are characterized as general revenue by the Revenue Stabilization Law, the interest is not levied to pay for maintaining traditional government functions and services. [Ark. Code Ann. § 19-5-101 et seq.](#) [Sanford v. Walther](#), 2015 Ark. 285, 467 S.W.3d 139 (2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 [Smith v. Pullman Inc.](#), 280 Ala. 295, 193 So. 2d 516 (1966); [Sargent v. Tuttle](#), 67 Conn. 162, 34 A. 1028 (1895); [State ex rel. Todd v. Thomas](#), 127 Neb. 891, 257 N.W. 265, 96 A.L.R. 1470 (1934); [Pier 67, Inc. v. King County](#), 89 Wash. 2d 379, 573 P.2d 2 (1977).
- 2 [Dominion Land & Title Corp. v. Department of Revenue](#), 320 So. 2d 815 (Fla. 1975); [Henry v. McKay](#), 164 Wash. 526, 3 P.2d 145, 77 A.L.R. 1025 (1931).
- 3 [Cool Homes, Inc. v. Fairbanks North Star Borough](#), 860 P.2d 1248, 34 A.L.R.5th 859 (Alaska 1993); [Arizona Dept. of Revenue v. Trico Elec. Co-op., Inc.](#), 151 Ariz. 544, 729 P.2d 898 (1986); [Alexander v. Blackmon](#), 233 Ga. 235, 210 S.E.2d 736 (1974); [Northern Trust Co. v. Bernardi](#), 115 Ill. 2d 354, 105 Ill. Dec. 220, 504 N.E.2d 89 (1987); [State v. Great Atlantic & Pacific Tea Co.](#), 190 La. 925, 183 So. 219 (1938); [Aucella v. Town of Winslow](#), 564 A.2d 68 (Me. 1989); [U.S. West, Inc. v. Department of Revenue](#), 2008 MT 125, 343 Mont. 1, 183 P.3d 16 (2008) (clear legislative intent is to require payment of interest penalty on outstanding taxes); [Ameritas Life Ins. Corp. v. Balka](#), 257 Neb. 878, 601 N.W.2d 508 (1999); [Livesay v. De Armond](#), 131 Or. 563, 284 P. 166, 68 A.L.R. 422 (1930); [Webster v. Williams](#), 183 S.C. 368, 191 S.E. 51, 111 A.L.R. 1348 (1937); [Rooney Vermont Associates v. Town of Pownal](#), 140 Vt. 150, 436 A.2d 733 (1981); [Henry v. McKay](#), 164 Wash. 526, 3 P.2d 145, 77 A.L.R. 1025 (1931); [In re Eastern Associated Coal Corp.](#), 157 W. Va. 749, 204 S.E.2d 71 (1974); [William Wrigley, Jr., Co. v. Wisconsin Dept. of Revenue](#), 176 Wis. 2d 795, 500 N.W.2d 667 (1993); [Moncrief v. Wyoming State Bd. of Equalization](#), 856 P.2d 440 (Wyo. 1993).
- 4 [Frey v. Comptroller of Treasury](#), 422 Md. 111, 29 A.3d 475 (2011), cert. denied, 2012 WL 986857 (U.S. 2012).
- 5 [Cool Homes, Inc. v. Fairbanks North Star Borough](#), 860 P.2d 1248, 34 A.L.R.5th 859 (Alaska 1993).
- 6 [U.S. West, Inc. v. Department of Revenue](#), 2008 MT 125, 343 Mont. 1, 183 P.3d 16 (2008) (taxpayer initially received a refund for a tax overpayment but later reported additional income on an amended return, which resulted in an additional tax liability).

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L. Penalties, Interest, and Costs

§ 743. Interest—Taxpayer's entitlement to interest

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Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 75, 76](#) (Notice of motion and affidavit in support of motion to compel payment of interest from date of application for refund of tax payments)

A taxpayer may be entitled to interest on a refund of excess taxes paid because of taxpayer error or on the taxpayer's recovery of taxes paid under protest.¹ A taxpayer may not, however, recover interest on a refund if it is not authorized by statute.²

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Footnotes

- ¹ [Saunders Properties v. Municipality of Anchorage](#), 846 P.2d 135 (Alaska 1993); [Gates Rubber Co. v. State Bd. of Equalization of State of Colo.](#), 770 P.2d 1189 (Colo. 1989); [Intracoastal Pipe Service Co., Inc. v. Assumption Parish Sales and Use Tax Dept.](#), 563 So. 2d 863 (La. 1990); [In re Objections and Defenses to Real Property Taxes for 1970 Assessment](#), 306 Minn. 184, 235 N.W.2d 390 (1975); [Republic Airlines, Inc. v. State By and Through State Tax Com'r](#), 359 N.W.2d 843 (N.D. 1984); [Multi-Cinema, Ltd. v. South Carolina Tax Com'n](#), 300 S.C. 514, 389 S.E.2d 153 (1989); [Beare Co. v. State](#), 814 S.W.2d 715 (Tenn. 1991).

2 [State Tax Com'n, ex rel., Nevada Dept. of Taxation v. American Home Shield of Nevada, Inc., 254 P.3d 601, 127 Nev. Adv. Op. No. 31 \(Nev. 2011\); Matter of Black, 775 P.2d 484 \(Wyo. 1989\).](#)

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Part Ten. Payment and Collection

L. Penalties, Interest, and Costs

§ 744. Costs and attorney's fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2763](#), [2791](#), [2809](#), [3563](#), [3711](#)

A State's power to assess penalties for failure to comply with the legal duty to pay taxes when due includes the power to impose liability for costs reasonably incurred in legal proceedings to collect those taxes.¹ Such a statute may be limited to the collection of attorney's fees only after a judgment is determined.²

A statute may authorize awarding reasonable litigation costs to a prevailing party in an action for refund of a tax.³

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Footnotes

- ¹ [Engebretsen v. Gay](#), 158 Cal. 30, 109 P. 880 (1910).
- ² [Gano v. City of Houston](#), 834 S.W.2d 585 (Tex. App. Houston 14th Dist. 1992), writ denied, (Dec. 2, 1992).
- ³ [Apple, Inc. v. Franchise Tax Bd.](#), 199 Cal. App. 4th 1, 132 Cal. Rptr. 3d 401 (1st Dist. 2011), review denied, (Jan. 4, 2012) (statute is not the exclusive means or measure of recovery).
A tax court typically will grant counsel fees only where one party can show a conscious intentional failure or reckless indifference on behalf of the other party. [DSC of Newark v. South Plainfield](#), 25 N.J. Tax 120, 2009 WL 3086466 (2009).

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Part Ten. Payment and Collection

L. Penalties, Interest, and Costs

§ 745. Opportunity to pay taxes; notice to taxpayer of liability for penalty

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2763](#), [2809](#), [3563](#), [3711](#)

A taxpayer should not be charged with penalties or with interest for failure to pay taxes until given an opportunity to pay them,¹ or to appeal, as provided by statute.² A taxpayer whose failure to pay a tax until after the expiration of the period for payment without penalty or interest was due to a bona fide, although mistaken, belief that there was no one legally qualified to receive payment is not chargeable with penalties and interest.³ The failure of public officials to give proper notice, as provided by law, of the amount of tax assessed⁴ or of the fact of delinquency⁵ invalidates the assessment of penalties.

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Footnotes

- 1 [Morrison-Knudson Co. v. State Bd. of Equalization](#), 58 Wyo. 500, 135 P.2d 927 (1943).
- 2 [State v. Pollock](#), 251 Ala. 603, 38 So. 2d 870, 7 A.L.R.2d 757 (1948).
- 3 [Commonwealth v. Cincinnati, N.O. & T.P. Ry. Co.](#), 288 Ky. 43, 155 S.W.2d 460, 137 A.L.R. 301 (1941); [City of Bayonne v. Murphy & Perrett Co.](#), 7 N.J. 298, 81 A.2d 485 (1951).
- 4 [Citizens' Water Works v. Hughes](#), 362 Ill. 136, 199 N.E. 265, 102 A.L.R. 401 (1935).
- 5 [Miller v. Lakewood Housing Co.](#), 125 Ohio St. 152, 11 Ohio L. Abs. 543, 180 N.E. 700, 81 A.L.R. 1239 (1932) (overruled in part on other grounds by, [Bliss Realty, Inc. v. Darash](#), 158 Ohio St. 287, 49 Ohio Op. 128, 109 N.E.2d 276 (1952)).

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Part Ten. Payment and Collection

L. Penalties, Interest, and Costs

§ 746. Effect of good faith contest of liability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2763, 2809, 3563, 3711

A.L.R. Library

[What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause", 29 A.L.R.4th 413](#)

Generally, a taxpayer may not avoid liability for a penalty or for interest on the ground of a good faith belief or contention that he or she is not liable for the payment of the tax.¹ While there is authority that where a court invalidates a portion of the tax the taxpayer is nevertheless liable for the penalty for failure to pay the portion of the tax that the court sustains,² it has also been held that the taxpayer may not be held liable for penalties and interest on so much of the tax as is determined to be valid because that would impose an unconstitutional cost on obtaining justice.³

Some statutes allow a taxpayer to escape a negligence penalty by showing that the taxpayer based the failure to pay on a legitimate, good faith interpretation of an arguable point of law.⁴ A statute qualifying liability to interest on a delayed payment of a tax in the case of delay occasioned by necessary litigation, other than litigation to defeat payment of the tax, limits liability for interest during the period of litigation over the constitutionality of a statute, which, if upheld, would have relieved the taxpayer from paying the tax in question.⁵ Good faith does not require that the taxpayer's contention be upheld in court; however, the penalty will be upheld if the taxpayer's claim is frivolous, malicious, and unreasonable so as to be arbitrary and clearly show conduct not prompted by good faith.⁶

Some courts hold that statutes specifically providing penalties for the failure to file tax returns address willful failure to file and turn on the taxpayer's culpability; thus, delinquent penalty provisions should not be construed to provide an additional sanction for taxpayers who do not file because they have a good-faith basis for contesting their tax liability.⁷

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Footnotes

- 1 [Citizens' Water Works v. Hughes](#), 362 Ill. 136, 199 N.E. 265, 102 A.L.R. 401 (1935); [Norborne Land Drainage Dist. Co. of Carroll County v. Cherry Valley Tp., of Carroll County](#), 325 Mo. 1197, 31 S.W.2d 201 (1930); [Jorgensen-Bennett Mfg. Co. v. Knight](#), 156 Tenn. 579, 3 S.W.2d 668, 60 A.L.R. 393 (1928).
- 2 [Norborne Land Drainage Dist. Co. of Carroll County v. Cherry Valley Tp., of Carroll County](#), 325 Mo. 1197, 31 S.W.2d 201 (1930); [Illinois Cent. R. Co. v. Garner](#), 193 Tenn. 91, 241 S.W.2d 926 (1951).
- 3 [In re Clark's Estate](#), 105 Mont. 401, 74 P.2d 401, 114 A.L.R. 496 (1937).
- 4 [Benjamin v. Utah State Tax Com'n](#), 2011 UT 14, 250 P.3d 39 (Utah 2011) (further holding that imposition of a negligence penalty was proper where the taxpayers did not so base their failure to pay). Negligence penalties are discussed in § 739.
- 5 [In re Clark's Estate](#), 105 Mont. 401, 74 P.2d 401, 114 A.L.R. 496 (1937).
- 6 [Commonwealth v. Cincinnati, N.O. & T.P. Ry. Co.](#), 288 Ky. 43, 155 S.W.2d 460, 137 A.L.R. 301 (1941).
- 7 [William Wrigley, Jr., Co. v. Wisconsin Dept. of Revenue](#), 176 Wis. 2d 795, 500 N.W.2d 667 (1993).

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Part Ten. Payment and Collection

L. Penalties, Interest, and Costs

§ 747. Effect of good faith contest of liability—Necessity and effect of payment or tender

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2763, 2809, 3563, 3711

While a taxpayer is usually chargeable with penalties and interest for delay or failure to pay taxes, notwithstanding that he or she is acting in good faith contesting the validity of the tax, if such a taxpayer tenders the portion of the taxes that he or she concedes to be due and contests the legality of the remainder, penalties may not be imposed on the amount of the taxes tendered even though the taxpayer's challenge to the remainder is not upheld.¹ Even in the absence of a contest, when the payment of a delinquent tax is accepted in the amount of the tax alone, a subsequent judgment for penalties and costs is not proper.² However, a taxpayer may not, by tendering a portion of the taxes due on the condition that it be received in full satisfaction, be relieved from the payment of the penalties.³

One desiring to avoid paying penalties and interest may pay the tax assessed promptly and then institute a proceeding for a refund; if the taxpayer establishes the invalidity of all or part of the tax, the taxing body is required to refund the amount illegally exacted.⁴

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- ¹ [Chicago, R.I. & P. Ry. Co. v. Slate](#), 213 Iowa 1294, 241 N.W. 398 (1932); [Northern Pac. Ry. Co. v. Franklin County](#), 118 Wash. 117, 203 P. 27 (1921); [Morrison-Knudson Co. v. State Bd. of Equalization](#), 58 Wyo. 500, 135 P.2d 927 (1943).
- ² [Clase v. Fair](#), 129 Vt. 573, 285 A.2d 705 (1971).
- ³ [Bohler v. Callaway](#), 267 U.S. 479, 45 S. Ct. 431, 69 L. Ed. 745 (1925).

4 [Rixey's Ex'rs v. Commonwealth, 125 Va. 337, 99 S.E. 573 \(1919\).](#)

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Part Ten. Payment and Collection

L. Penalties, Interest, and Costs

§ 748. Retroactive operation of statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2763](#), [2809](#), [3563](#), [3711](#)

A statute imposing interest or penalties on delinquent taxes does not apply to taxes delinquent at the time that the act takes effect unless the intent that the statute operate retroactively is manifest.¹ The legislature may, however, make such a provision retroactive,² and it may constitutionally be applied to those which have already become delinquent at the time of the enactment of the statute.³ The amendment of a tax statute by the addition or change of penalty or interest charges prescribes the amount to be paid with respect to all taxes whether levied before or after the date of the amendment.⁴

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Footnotes

- 1 [People v. W.A. Wiebolt & Co.](#), 357 Ill. 208, 191 N.E. 689, 93 A.L.R. 789 (1934).
- 2 [Bankers' Trust Co. v. Blodgett](#), 260 U.S. 647, 43 S. Ct. 233, 67 L. Ed. 439 (1923); [Henry v. McKay](#), 164 Wash. 526, 3 P.2d 145, 77 A.L.R. 1025 (1931).
- 3 [League v. State of Tex.](#), 184 U.S. 156, 22 S. Ct. 475, 46 L. Ed. 478 (1902); [Henry v. McKay](#), 164 Wash. 526, 3 P.2d 145, 77 A.L.R. 1025 (1931).
- 4 [Henry v. McKay](#), 164 Wash. 526, 3 P.2d 145, 77 A.L.R. 1025 (1931).

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Part Ten. Payment and Collection

L. Penalties, Interest, and Costs

§ 749. Remission or reduction of interest and penalties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3220

Generally, statutes that relieve delinquent taxpayers from penalties and interest are valid.¹ A statute conferring on county officers discretionary power to waive or reduce penalties or interest when such action appears likely to facilitate collection of taxes does not violate a constitutional provision requiring that taxes be levied and collected under general laws operating uniformly throughout the state;² nor does it unconstitutionally delegate legislative power by conferring such discretionary power on county officers.³

The grant of a power to tax officers to remit penalties for tax delinquencies includes the power to remit interest charges imposed by statute with respect to delinquent taxes.⁴

For purposes of a statute providing for abatement of penalties if it is shown that any failure to file a tax return or to pay a tax in a timely manner is due to reasonable cause and not willful neglect, "reasonable cause" is established where, at a minimum, a taxpayer has demonstrated that he or she exercised the degree of care that an ordinary taxpayer in that person's position would have exercised.⁵ Another statute requires that the delay be caused by the department of revenue's negligence before taxpayer is entitled to an abatement of interest and penalties.⁶

Statutes providing for the remission or reduction of penalties are construed as not applying retroactively to interest and penalties that have accrued prior to the date on which the statute becomes effective in the absence of anything in the language of the statute clearly indicating such an intention.⁷ Generally, however, the repeal of a statute imposing a penalty or interest charge on delinquent taxpayers terminates liability for penalties that have accrued under it⁸ unless the statute provides that it will not

affect liabilities or interest already accrued or incurred.⁹ Giving retroactive operation to a statute decreasing the rate of interest chargeable on delinquent taxes does not impair an existing obligation.¹⁰

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Footnotes

- 1 Eastern Idaho Health Services, Inc. v. Burtenshaw, 122 Idaho 904, 841 P.2d 434 (1992) (overruled on other grounds by, Floyd v. Board of Com'rs of Bonneville County, 137 Idaho 718, 52 P.3d 863 (2002)); In re Clark's Estate, 105 Mont. 401, 74 P.2d 401, 114 A.L.R. 496 (1937); Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317 (1936); Livesay v. De Armond, 131 Or. 563, 284 P. 166, 68 A.L.R. 422 (1930).
- 2 Livesay v. De Armond, 131 Or. 563, 284 P. 166, 68 A.L.R. 422 (1930); Jones v. Williams, 121 Tex. 94, 45 S.W.2d 130, 79 A.L.R. 983 (1931).
- 3 Livesay v. De Armond, 131 Or. 563, 284 P. 166, 68 A.L.R. 422 (1930).
- 4 Livesay v. De Armond, 131 Or. 563, 284 P. 166, 68 A.L.R. 422 (1930); Jones v. Williams, 121 Tex. 94, 45 S.W.2d 130, 79 A.L.R. 983 (1931).
- 5 Geoffrey, Inc. v. Commissioner of Revenue, 453 Mass. 17, 899 N.E.2d 87 (2009).
- 6 In re City of Wichita, 274 Kan. 915, 59 P.3d 336 (2002).
- 7 Louisville Car Wheel & Ry. Supply Co. v. City of Louisville, 146 Ky. 573, 142 S.W. 1043 (1912).
- 8 Henry v. McKay, 164 Wash. 526, 3 P.2d 145, 77 A.L.R. 1025 (1931).
- 9 Louisville Car Wheel & Ry. Supply Co. v. City of Louisville, 146 Ky. 573, 142 S.W. 1043 (1912).
- 10 Henry v. McKay, 164 Wash. 526, 3 P.2d 145, 77 A.L.R. 1025 (1931).

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Part Ten. Payment and Collection

L. Penalties, Interest, and Costs

§ 750. Remission or reduction of interest and penalties—By court

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2763](#), [2809](#), [3563](#), [3711](#)

Courts may, in the exercise of their equitable powers, abate tax penalties.¹ However, the court's equitable power to relieve against penalties may only be invoked in a tax matter pursuant to payment of taxes under protest.²

Courts determine what constitutes a taxpayer's excusable neglect, so as to allow the abatement of mandatory penalties, on a case-by-case basis.³

A statute allowing courts to make orders in receivership proceedings did not authorize an order requiring that a county cancel delinquency penalties for property taxes.⁴

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Footnotes

¹ [General Petroleum Corp. of Cal. v. Smith](#), 62 Ariz. 239, 157 P.2d 356, 158 A.L.R. 364 (1945); [State, Dept. of Revenue v. Zuckerman-Vernon Corp.](#), 354 So. 2d 353 (Fla. 1977) (authority to reduce or modify a documentary stamp tax penalty).

A taxpayer provided substantial authority for its failure to pay a tax, notwithstanding that it was ultimately in error, as required to support a trial court's decision to waive or abate a penalty, given language in the assessor's publications. [Victor Bravo Aviation, LLC v. State Tax Assessor](#), 2011 ME 50, 17 A.3d 1237 (Me. 2011).

² [State v. Delinquent Taxpayers as Shown on 1972 Real Property Delinquent Tax Records of Metropolitan Government of Nashville and Davidson County](#), 526 S.W.2d 453 (Tenn. 1975).

As to payment under protest, see [§ 713](#).

- 3 Application of American Restaurant Operations, 264 Kan. 518, 957 P.2d 473 (1998).
4 People ex rel. Strumpfer v. Westoaks Inv. No. 27, 139 Cal. App. 4th 1038, 43 Cal. Rptr. 3d 548 (2d Dist.
 2006).

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Part Ten. Payment and Collection

L. Penalties, Interest, and Costs

§ 751. Enforcement of liability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2763](#), [2809](#), [3563](#), [3711](#)

Assessment of statutory penalties for tax delinquencies is not essential to the enforcement of liability for those penalties when a statute fixes the amount of liability.¹ The penalty should be computed on the amount of the tax remaining unpaid and delinquent, and interest after a tax sale must be computed on the amount for which the property was sold.² A tax penalty will not be enforced in a proceeding to establish a lien for unpaid taxes where such a penalty is not claimed in the petition.³

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- ¹ [American Sur. Co. v. Hamrick Mills](#), 191 S.C. 362, 4 S.E.2d 308, 124 A.L.R. 1147 (1939).
- ² [State v. Evans](#), 79 Utah 370, 6 P.2d 161, 84 A.L.R. 766 (1931).
- ³ [U S Trust Co of New York v. New Mexico](#), 183 U.S. 535, 22 S. Ct. 172, 46 L. Ed. 315 (1902).

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Part Ten. Payment and Collection

LI. Methods of Collection and Enforcement

A. General Principles

§ 752. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2800, 3257, 3560

The power to collect taxes is a fundamental attribute of sovereignty.¹ Accordingly, a legislature may adopt any reasonable method designed for the effective enforcement of tax collection whether the property taxed belongs to residents or nonresidents.² Thus, the legislature may permit a municipality to—

— use the state and county tax machinery to collect municipal taxes.³

— attach other property of the taxpayer.⁴

— seize the taxpayer's personal property summarily and sell it.⁵

— impose penalties for nonpayment.⁶

The collection of taxes must, however, be based on legislative authority.⁷

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¹ [Bieling v. Malloy](#), 133 Vt. 522, 346 A.2d 204, 86 A.L.R.3d 1244 (1975).

² [Ralston Purina Co. v. Board of Tax Review of Town of Franklin](#), 203 Conn. 425, 525 A.2d 91 (1987); [Lucas v. Purdy](#), 142 Iowa 359, 120 N.W. 1063 (1909); [Kling v. Geary](#), 667 S.W.2d 379 (Ky. 1984) (method of

- collecting ad valorem taxes held constitutional); *Collector of Revenue v. Olvey*, 238 La. 980, 117 So. 2d 563 (1959); *White v. Lee*, 124 N.H. 69, 470 A.2d 849 (1983) (method of collecting real estate taxes held constitutional); *Village of Charlotte v. Keon*, 207 N.Y. 346, 100 N.E. 1116 (1913).
- 3 *W. S. Brewbaker, Inc. v. City of Montgomery*, 270 Ala. 460, 119 So. 2d 887 (1959).
- 4 *Williams v. Jones*, 326 So. 2d 425 (Fla. 1975).
- 5 *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10, 29 Fed. R. Serv. 2d 743 (1980) (seizure of shipments of unstamped cigarettes traveling to Indian reservations); *T. M. Cobb Co. v. County of Los Angeles*, 16 Cal. 3d 606, 128 Cal. Rptr. 655, 547 P.2d 431, 19 U.C.C. Rep. Serv. 305 (1976); *Capitol Bank & Trust Co. v. City of Waterville*, 343 A.2d 213 (Me. 1975); *Gathwright v. Mayor and Council of City of Baltimore*, 181 Md. 362, 30 A.2d 252, 145 A.L.R. 590 (1943); *State ex rel. Keitel v. Harris*, 353 Mo. 1043, 186 S.W.2d 31 (1945); *Peters v. Sjöholm*, 95 Wash. 2d 871, 631 P.2d 937 (1981).
- 6 §§ 738 et seq.
- 7 *New England Tel. & Tel. Co. v. City of Rochester*, 144 N.H. 118, 740 A.2d 135 (1999).

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Part Ten. Payment and Collection

LI. Methods of Collection and Enforcement

A. General Principles

§ 753. Due process and other constitutional concerns

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2801](#), [3257](#), [3560](#)

Due process does not require a judicial determination of tax liability before a tax may be collected if a pre-collection administrative hearing is afforded.¹ Also, it is constitutional to postpone the hearing in a tax collection action until after payment of the delinquent taxes.² A taxpayer is, however, deprived of property without due process where a tax sale is conducted pursuant to a statute that provides for a summary remedy for the collection of taxes without providing an opportunity, either before or after the seizure, for the taxpayer to contest the validity of the tax.³

Constitutional provisions for a jury trial do not apply to the enforcement of demands for taxes.⁴ Neither does the rule of uniformity and equality of taxation apply to provisions relating to the collection and enforcement of the tax provided that these provisions and penalties imposed for failure to pay taxes are equally and uniformly imposed on persons similarly situated and belonging to the same class.⁵

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Footnotes

- ¹ [Franchise Tax Bd. v. Superior Court](#), 212 Cal. App. 3d 1343, 261 Cal. Rptr. 236 (2d Dist. 1989).
- ² [Peters v. Sjolholm](#), 95 Wash. 2d 871, 631 P.2d 937 (1981).
- ³ [Querner Truck Lines, Inc. v. State](#), 610 S.W.2d 533 (Tex. Civ. App. San Antonio 1980), writ refused n.r.e., 615 S.W.2d 176 (Tex. 1981).
- ⁴ [Cunningham v. Northwestern Improvement Co.](#), 44 Mont. 180, 119 P. 554 (1911).

5 [Grossfeld v. Baughman, 148 Md. 330, 129 A. 370 \(1925\).](#)

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§ 754. Construction of statutes providing for collection of taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2802

Statutes governing the collection of taxes are strictly construed against the State and all doubts resolved in favor of the taxpayer.¹
If the right asserted on behalf of the collection of a tax does not plainly appear from the words of the statute, it must be denied.²

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Footnotes

- ¹ [Maricopa County v. Trustees of Arizona Lodge No. 2, F. & A. M.](#), 52 Ariz. 329, 80 P.2d 955 (1938); [United Illuminating Co. v. City of New Haven](#), 240 Conn. 422, 692 A.2d 742 (1997); [Capitol Bank & Trust Co. v. City of Waterville](#), 343 A.2d 213 (Me. 1975); [Rossville Vending Mach. Corp. v. Comptroller of the Treasury](#), 114 Md. App. 346, 689 A.2d 1295 (1997); [Collector of Taxes of City of Boston v. Revere Bldg.](#), 276 Mass. 576, 177 N.E. 577, 79 A.L.R. 112 (1931); [State ex rel. Tillman v. District Court of Tenth Judicial Dist. in and for Fergus County](#), 101 Mont. 176, 53 P.2d 107, 103 A.L.R. 376 (1936).
- ² [Collector of Taxes of City of Boston v. Revere Bldg.](#), 276 Mass. 576, 177 N.E. 577, 79 A.L.R. 112 (1931).

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§ 755. Role of court

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2801](#), [3257](#), [3560](#)

The levy and collection of taxes is a matter resting solely within the control of the legislative branch, and courts will not interfere with the legislature's choice of a collection method unless the method is constitutionally defective¹ or unless a statute expressly confers the authority on the courts to appoint a receiver, commissioner, or other officer to levy and collect taxes or otherwise aid in the levy and collection of taxes.² Courts may, however, hear actions brought by tax collectors to collect taxes³ and to sell land for nonpayment of taxes.⁴

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Footnotes

- 1 [Williams v. Jones](#), 326 So. 2d 425 (Fla. 1975).
A flaw in the collection procedure, no matter how serious from the taxpayer's point of view, will not make the exaction unconstitutional. [Tucker v. Holt](#), 343 Ark. 216, 33 S.W.3d 110 (2000).
- 2 [Yost v. Dallas County](#), 236 U.S. 50, 35 S. Ct. 235, 59 L. Ed. 460 (1915).
- 3 [§ 763](#).
- 4 [§§ 803 et seq.](#)

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§ 756. Exclusiveness of statutory remedy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2802

Taxes may be collected only in the manner provided by the legislature.¹ Thus, where the statute that creates the tax provides a special remedy for its collection, that remedy is exclusive.² Also, where the statutes provide a full and comprehensive system by which taxes may be collected, that method is exclusive.³

Observation:

There is at least some older authority that the statutory remedies are merely cumulative and that the common-law action to recover a tax is always available unless the statutory remedies are expressly made exclusive.⁴

When the statutory remedy is regarded as excluding actions at law for the collection of taxes, a court may not use its equity powers for that purpose.⁵

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Footnotes

- 1 [Darnell v. City of Broken Bow](#), 139 Neb. 844, 299 N.W. 274, 136 A.L.R. 101 (1941); [City of Sapulpa v. Land](#), 1924 OK 92, 101 Okla. 22, 223 P. 640, 35 A.L.R. 872 (1924); [Chevron U.S.A., Inc. v. State](#), 918 P.2d 980 (Wyo. 1996).
Taxes may be collected only in the manner expressly specified by statute. [Millennium Park Joint Venture, LLC v. Houlihan](#), 241 Ill. 2d 281, 349 Ill. Dec. 898, 948 N.E.2d 1 (2010).
The exclusive tax remedy doctrine requires that a taxing authority follow its tax assessment and collection procedures before a tax collection claim may be brought in court. [City of Jefferson City, Mo. v. Cingular Wireless, LLC](#), 531 F.3d 595 (8th Cir. 2008) (applying Missouri law).
- 2 [McPike v. Heaton](#), 131 Cal. 109, 63 P. 179 (1900); [Merv E. Hilpipe Auction Co. v. Solon State Bank](#), Solon, Iowa, 343 N.W.2d 452 (Iowa 1984); [City of Rochester v. Bloss](#), 185 N.Y. 42, 77 N.E. 794 (1906); [Marye v. Diggs](#), 98 Va. 749, 37 S.E. 315 (1900).
- 3 [City of Sapulpa v. Land](#), 1924 OK 92, 101 Okla. 22, 223 P. 640, 35 A.L.R. 872 (1924).
- 4 [Greil Bros. Co. v. City of Montgomery](#), 182 Ala. 291, 62 So. 692 (1913); [Smith v. Eigerman](#), 5 Ind. App. 269, 31 N.E. 862 (1892).
- 5 [Greil Bros. Co. v. City of Montgomery](#), 182 Ala. 291, 62 So. 692 (1913); [Marye v. Diggs](#), 98 Va. 749, 37 S.E. 315 (1900).

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§ 757. Effect of inadequacy of statutory remedy

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2802

Some courts hold that the statutory remedy provided for the collection of taxes is exclusive of any common-law remedy even when the statutory remedy is inadequate or ineffectual.¹ Other courts hold that the rule that where the legislature provides a remedy for collecting taxes, that remedy is exclusive is subject to an exception where that remedy is found inadequate in the particular instance, cannot be enforced, or has been exhausted without satisfaction of the taxes; in such cases, some other appropriate remedy may used.² This rule recognizes that the statutory remedy or method of collecting taxes is exclusive if adequate, in which case courts may entertain actions for that purpose only when the legislature so provides.³

When a personal action is brought on the theory that the special statutory remedy is inadequate, the plaintiff must show that taxes could not have been collected by the ordinary methods provided, and in the absence of such a showing, it will be presumed that they could have been so collected.⁴

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Footnotes

- ¹ [Marion County v. Woodburn Mercantile Co.](#), 60 Or. 367, 119 P. 487 (1911).
- ² [State ex rel. Tillman v. District Court of Tenth Judicial Dist. in and for Fergus County](#), 101 Mont. 176, 53 P.2d 107, 103 A.L.R. 376 (1936).
- ³ [State ex rel. Tillman v. District Court of Tenth Judicial Dist. in and for Fergus County](#), 101 Mont. 176, 53 P.2d 107, 103 A.L.R. 376 (1936).

4 [Doniphan County Com'rs v. Allen, 5 Kan. App. 122, 48 P. 887 \(1897\).](#)

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§ 758. Retrospective change of method

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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A State may change the method of collecting taxes that have already been assessed at any time before they have been paid or otherwise discharged or released without any violation of the constitutional rights of a property owner.¹ A delinquent taxpayer does not have a vested right in an existing method of collecting taxes.²

While the character of the remedy may be changed after the tax has been assessed, the character of the tax may not be, and a statute attempting to create a personal liability to pay a tax previously assessed on land, when no such liability existed when the assessment was made, is unconstitutional.³ One who has acquired land after tax delinquencies have occurred may not prevent the operation of the law against it because in such cases, the doctrine of innocent purchasers does not apply.⁴

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- ¹ [Kentucky Union Co. v. Commonwealth of Kentucky](#), 219 U.S. 140, 31 S. Ct. 171, 55 L. Ed. 137 (1911); [Schreiber v. Cook County](#), 388 Ill. 297, 58 N.E.2d 40, 155 A.L.R. 1162 (1944); [Henry v. McKay](#), 164 Wash. 526, 3 P.2d 145, 77 A.L.R. 1025 (1931).
- ² [League v. State of Tex.](#), 184 U.S. 156, 22 S. Ct. 475, 46 L. Ed. 478 (1902); [Davis v. Barr](#), 250 Miss. 54, 157 So. 2d 505 (1963), order clarified on other grounds, 250 Miss. 54, 163 So. 2d 745 (1964); [O'Brien v. Ross](#), 144 Mont. 115, 394 P.2d 1013 (1964); [Cota v. McDermott](#), 73 N.D. 459, 16 N.W.2d 54, 155 A.L.R. 1271 (1944); [Henry v. McKay](#), 164 Wash. 526, 3 P.2d 145, 77 A.L.R. 1025 (1931).
- ³ [City of Grand Rapids v. Lake Shore & M.S. Ry. Co.](#), 130 Mich. 238, 89 N.W. 932 (1902).

4 [Kentucky Union Co. v. Commonwealth of Kentucky, 219 U.S. 140, 31 S. Ct. 171, 55 L. Ed. 137 \(1911\).](#)

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§ 759. Right to maintain action in another state to enforce tax

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  [8](#)

The principles that prevent one State or country from enforcing the penal laws of another¹ apply to foreign revenue laws and, under the traditional view, preclude a State or its collecting officer from maintaining in the courts of another jurisdiction an action for the collection of taxes due to it.² Accordingly, a federal court in one state will not entertain an action to recover a tax imposed in another state.³ However, some courts have held that an action or proceeding may be maintained in the courts of one state to recover taxes due to another state.⁴ In any event, a foreign court will not enforce a tax obligation where the plaintiff State does not demonstrate that there was any basis within its borders on which to exercise its power of taxation over the defendant.⁵

A judgment of another state is not denied full faith and credit in state and federal courts merely because it is a judgment for taxes.⁶ Even if the court does not have jurisdiction to enforce tax liabilities created by statutes of another state, a judgment of the other state's court for taxes owed there may not be denied full faith and credit, merely because it is for taxes, and the courts of the forum state would not entertain a suit to enforce the original liability.⁷

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Footnotes

- ¹ [Am. Jur. 2d, Conflict of Laws § 8.](#)
- ² [Moore v. Mitchell](#), 30 F.2d 600, 65 A.L.R. 1354 (C.C.A. 2d Cir. 1929), [aff'd](#), 281 U.S. 18, 50 S. Ct. 175, 74 L. Ed. 673 (1930); [State of Colorado v. Harbeck](#), 232 N.Y. 71, 133 N.E. 357 (1921); [State of Minn. v. Karp](#), 84 Ohio App. 51, 39 Ohio Op. 96, 52 Ohio L. Abs. 513, 84 N.E.2d 76 (1st Dist. Hamilton County 1948).

- 3 Moore v. Mitchell, 281 U.S. 18, 50 S. Ct. 175, 74 L. Ed. 673 (1930); Johnson v. Riverland Levee Dist., 117 F.2d 711, 134 A.L.R. 326 (C.C.A. 8th Cir. 1941).
- 4 State ex rel. Okl. Tax Commission v. Rodgers, 238 Mo. App. 1115, 193 S.W.2d 919, 165 A.L.R. 785 (1946); State of Minn. v. Karp, 84 Ohio App. 51, 39 Ohio Op. 96, 52 Ohio L. Abs. 513, 84 N.E.2d 76 (1st Dist. Hamilton County 1948).
- 5 State of Minn. v. Karp, 84 Ohio App. 51, 39 Ohio Op. 96, 52 Ohio L. Abs. 513, 84 N.E.2d 76 (1st Dist. Hamilton County 1948).
- 6 Milwaukee County v. M.E. White Co., 296 U.S. 268, 56 S. Ct. 229, 80 L. Ed. 220 (1935).
- 7 Milwaukee County v. M.E. White Co., 296 U.S. 268, 56 S. Ct. 229, 80 L. Ed. 220 (1935).

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A. General Principles

§ 760. Pleading and proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2858, 2859

The plaintiff must plead and prove compliance with the essential requirements of a statute conferring the right of action to collect taxes.¹ Tax authorities seeking to enforce collection of a tax have the burden of establishing the validity of the tax in question.²

A taxpayer may waive the defense of nonownership by failing to comply with the administrative procedure for a protest.³ Affirmative defenses of payment and offset are waived by a failure to plead them.⁴ Once a prima facie case of a tax delinquency is established, the burden shifts to the taxpayer to introduce competent evidence that he or she has paid the full amount of taxes, penalties, and interest or that there is some other defense that applies.⁵

A statutory presumption that a notice of delinquency is presumed delivered when deposited in the mail may be rebutted by the taxpayer's testimony that he or she did not receive it and by evidence that the tax authority had an incorrect address listed for the taxpayer.⁶

A tax authority establishing a prima facie case in a tax delinquency suit enjoys a rebuttable presumption that the personal property in question has a tax situs within the taxing unit's jurisdiction, and the taxpayer has the burden of producing evidence sufficient to justify a finding that the tax situs of the property is outside the taxing authority's jurisdiction.⁷

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Footnotes

- 1 Harrington v. Glidden, 179 Mass. 486, 61 N.E. 54 (1901), aff'd, 189 U.S. 255, 23 S. Ct. 574, 47 L. Ed. 798 (1903).
- A county did not introduce legally sufficient evidence to support its claims, on which it had the burden of proof, that a taxpayer owned the personal property at the address where the county sent the tax notices, and if the identity of an entity named as the owner does not match the identity of the defendant sued, a presumption does not arise concerning the defendant's liability. *Maximum Medical Imp., Inc. v. County of Dallas*, 272 S.W.3d 832 (Tex. App. Dallas 2008).
- 2 City of Barre v. Barre & Chelsea R. Co., 97 Vt. 398, 123 A. 427, 37 A.L.R. 207 (1924).
- 3 Robstown Independent School Dist. v. Anderson, 706 S.W.2d 952, 31 Ed. Law Rep. 1038 (Tex. 1986).
- 4 F-Star Socorro, L.P. v. City of El Paso, 281 S.W.3d 103 (Tex. App. El Paso 2008) (only general denial pleaded).
- 5 Maximum Medical Imp., Inc. v. County of Dallas, 272 S.W.3d 832 (Tex. App. Dallas 2008).
- 6 Uvalde County Appraisal Dist. v. Parker, 733 S.W.2d 609 (Tex. App. San Antonio 1987), writ refused n.r.e., (Nov. 18, 1987).
- 7 Davis v. City of Austin, 632 S.W.2d 331 (Tex. 1982).

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§ 761. Judgment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2861

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 124](#) (Judgment or decree—Granting recovery of delinquent property taxes—General form)

A judgment rendered in a personal action against a taxpayer to recover delinquent taxes should show the amount of tax for which it was rendered.¹

A judgment for taxes does not differ from any other with respect to its conclusiveness.² A judgment in a suit for taxes for one year is not a bar to a suit for taxes for another year, since the two suits are for separate causes of action,³ although the parties may be concluded in a suit for one year's tax with regard to a right or question adjudicated by a former judgment with respect to a tax for an earlier year.⁴

Where suit has once been brought against a property owner for the recovery of a tax, and it has been finally adjudged that the tax is invalid, a legalizing statute subsequently enacted does not nullify the effect of the judgment and subject the owner to another suit on the same demand.⁵

Generally, tax units are exempt from court costs in a suit to collect delinquent taxes.⁶

A judgment may not be recovered in a taxing unit's suit for delinquent taxes until the property owner's pending appeal challenging the appraised value on which those taxes were calculated has been finally determined.⁷

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Footnotes

- 1 [Wilson v. Glos, 266 Ill. 392, 107 N.E. 630 \(1914\).](#)
- 2 [City of New Orleans v. Warner, 175 U.S. 120, 20 S. Ct. 44, 44 L. Ed. 96 \(1899\).](#)
- 3 [Keokuk & W. R. Co. v. State of Missouri, 152 U.S. 301, 14 S. Ct. 592, 38 L. Ed. 450 \(1894\).](#)
- 4 [Tait v. Western Maryland Ry. Co., 289 U.S. 620, 53 S. Ct. 706, 77 L. Ed. 1405 \(1933\).](#)
- 5 [McManus v. Hornaday, 124 Iowa 267, 100 N.W. 33 \(1904\).](#)
- 6 [Bailey v. Cherokee County Appraisal Dist., 862 S.W.2d 581 \(Tex. 1993\).](#)
- 7 [Valero Transmission Co. v. San Marcos Consol. Independent School Dist., 770 S.W.2d 648, 53 Ed. Law Rep. 1326 \(Tex. App. Austin 1989\), writ denied, \(June 6, 1990\).](#)

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B. Particular Methods or Remedies

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Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 119 to 122, 245 to 255](#)

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§ 762. Summary remedies

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2835 to 2847

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 119 to 122](#) (Distress warrant and returns)

Taxes may be collected by summary administrative proceedings, such as the process of distress.¹ The statutory procedure governing the sale must be strictly followed since usually, title passes to the purchaser from the sheriff without the sanction of or confirmation by a court.² There is, however, a legal presumption that the official acts of the sheriff in selling personal property under a distress warrant are properly and rightfully done.³ The existence of a procedure for the collection of a tax by distraint does not enable the tax collector to dissolve an attachment of the taxpayer's goods obtained by a creditor after the assessment of the tax.⁴

Before issuing a warrant to distrain, a court must find that the taxpayer has sufficient property and an ability to pay.⁵ The purchaser of personal property is not liable to pay a tax assessed against the former owner, and if a lien for it does not exist against the property purchased at the time of sale, it is not subject to seizure once it is in the buyer's possession.⁶

In the case of bulky articles of personal property, a distress for taxes, good as against the taxpayer, may be made without an actual seizure of the property.⁷ It is sufficient if the officer holding the warrant gives the taxpayer or the taxpayer's agent in charge of the property notice of the seizure and properly advertises the property for sale.⁸ In conducting a sale under a tax distress warrant, if the sheriff does not receive a bid that the sheriff deems adequate under all the circumstances, the sheriff may either postpone the sale or make a return and secure an alias distress warrant.⁹

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Footnotes

- 1 [Scottish Union & National Ins. Co. v. Bowland](#), 196 U.S. 611, 25 S. Ct. 345, 49 L. Ed. 619 (1905); [Griffin v. Cook County](#), 369 Ill. 380, 16 N.E.2d 906, 118 A.L.R. 1157 (1938); [Hodge v. Muscatine County](#), 121 Iowa 482, 96 N.W. 968 (1903), [aff'd](#), 196 U.S. 276, 25 S. Ct. 237, 49 L. Ed. 477 (1905); [Thompson v. Henderson](#), 155 Md. 665, 142 A. 525, 58 A.L.R. 1213 (1928).
- 2 [Capitol Bank & Trust Co. v. City of Waterville](#), 343 A.2d 213 (Me. 1975); [Krug v. Hopkins](#), 132 Neb. 768, 273 N.W. 221, 110 A.L.R. 1071 (1937).
Under Virginia law, a city did not obtain a statutory tax lien by distress where funds purportedly subject to the lien were never seized. [In re Ricketts Const. Co., Inc.](#), 441 B.R. 512 (Bankr. W.D. Va. 2010).
A statute governing tax executions and notices of levy presupposes the issuance of the notice only after a valid levy has occurred. [Powers v. CDSaxton Properties, LLC](#), 285 Ga. 303, 676 S.E.2d 186 (2009).
- 3 [Krug v. Hopkins](#), 132 Neb. 768, 273 N.W. 221, 110 A.L.R. 1071 (1937).
- 4 [Flack v. Byse Agency](#), 96 N.H. 335, 76 A.2d 788 (1950).
- 5 [City of Boston v. Rockland Trust Co.](#), 391 Mass. 48, 460 N.E.2d 1269, 37 U.C.C. Rep. Serv. 1338 (1984).
- 6 [Carstarphen v. Town of Plymouth](#), 186 N.C. 90, 118 S.E. 905 (1923).
- 7 [Krug v. Hopkins](#), 132 Neb. 768, 273 N.W. 221, 110 A.L.R. 1071 (1937).
- 8 [St. Anthony & D. Elevator Co. v. Soucie](#), 9 N.D. 346, 83 N.W. 212 (1900).
- 9 [Krug v. Hopkins](#), 132 Neb. 768, 273 N.W. 221, 110 A.L.R. 1071 (1937).

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72 Am. Jur. 2d State and Local Taxation § 763

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Part Ten. Payment and Collection


LI. Methods of Collection and Enforcement

B. Particular Methods or Remedies

§ 763. Personal action against taxpayer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2849 to 2863

A statute may authorize local governments to collect delinquent real estate taxes by suing the taxpayer directly.¹ Where a statute provides remedies that do not embrace an action at law, a common-law action for the recovery of a tax as a debt does not lie in the absence of anything in the statutes making taxes debts of the taxpayer.² A private common-law action for fraud does not exist to collect taxes.³

Some courts presume that where a statute imposes a tax but does not make a provision for its collection, the legislature contemplated the enforcement of the tax by the ordinary remedies⁴ available to collect an obligation arising on an express or implied contract.⁵

Where the statute authorizes the tax collector to obtain a personal judgment for unpaid taxes in an action of debt or its equivalent, process must be served in the same manner as in other civil actions for the recovery of money, and the defendant is entitled to the right to make a defense of invalidity of the levy.⁶ A personal judgment may be rendered against a nonresident for taxes on his or her property that has a taxable situs within the state provided that jurisdiction over the person of such a nonresident is attained.⁷

A statute that imposes personal liability for real property taxes on residents of taxing districts but imposes only in rem liability on property owned by nonresidents does not violate the residents' equal protection rights because the distinction between resident and nonresident taxpayers is a valid recognition of the greater benefits personally received by residents from the taxes paid, of the limits of jurisdiction possessed by assessment officers, and of the difficulty of notifying nonresidents regarding changes in assessments and methods of filing grievances against them.⁸

Observation:

The restrictions of the Consumer Credit Protection Act on the power of creditors to garnish the wages of debtors do not apply to debts due for state taxes.⁹

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Footnotes

- 1 [City of Detroit v. Walker](#), 445 Mich. 682, 520 N.W.2d 135 (1994).
As to whether real estate taxes are a personal charge against the owner, see § 717.
- 2 [State ex rel. Tillman v. District Court of Tenth Judicial Dist. in and for Fergus County](#), 101 Mont. 176, 53 P.2d 107, 103 A.L.R. 376 (1936); [Acme Harvesting Mach. Co. v. Hinkley](#), 23 S.D. 509, 122 N.W. 482 (1909); [Marye v. Diggs](#), 98 Va. 749, 37 S.E. 315 (1900).
- 3 [Highland School Dist. v. Travenol Laboratories, Inc.](#), 291 Ark. 563, 726 S.W.2d 670, 38 Ed. Law Rep. 837 (1987).
- 4 [Shriver v. Woodbine Sav. Bank of Woodbine, Iowa](#), 285 U.S. 467, 52 S. Ct. 430, 76 L. Ed. 884 (1932); [State v. Travelers' Ins. Co.](#), 70 Conn. 590, 40 A. 465 (1898).
- 5 [Milwaukee County v. M.E. White Co.](#), 296 U.S. 268, 56 S. Ct. 229, 80 L. Ed. 220 (1935); [City of Rochester v. Bloss](#), 185 N.Y. 42, 77 N.E. 794 (1906).
- 6 [Griffin v. Cook County](#), 369 Ill. 380, 16 N.E.2d 906, 118 A.L.R. 1157 (1938).
- 7 [Greenbaum v. Commonwealth](#), 147 Ky. 450, 144 S.W. 45 (1912).
As to whether a foreign court has jurisdiction, see § 759.
- 8 [City of Buffalo v. Rein](#), 120 Misc. 2d 611, 466 N.Y.S.2d 108 (Sup 1982).
- 9 15 U.S.C.A. § 1673(b)(1), generally discussed in [Am. Jur. 2d, Attachment and Garnishment](#) § 146.

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Part Ten. Payment and Collection


LI. Methods of Collection and Enforcement

B. Particular Methods or Remedies

§ 764. Forfeiture of land

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3222 to 3232

A statute that provides for the forfeiture of lands to the State for failure to pay taxes on them is constitutional, if the statute also provides for a judicial proceeding by which the owner may avoid the forfeiture by having the delinquent taxes assessed and paying them, and such a forfeiture is declared only after a judicial proceeding in which the owner is summoned and heard.¹ However, a delinquent taxpayer should not be entitled to a hearing before foreclosure of his or her title where the taxpayer has not contested the amount of the tax through an available abatement process, the taxpayer is given a right of action for reimbursement and damages in case of payment of any tax assessed for an improper purpose, and the taxpayer may contest the tax title either in an independent action or in defense of the complaint to establish the validity of the tax title.²

A judicial sale of lands forfeited to the State for failure to list and pay taxes for certain specified years is not lacking in due process merely because, under such a statute, it is not necessary that the petition for forfeiture describe the parts of the tract held by adverse claimants to whose benefit the forfeiture will accrue where the defendant may show what parts of the tract are subject to sale if less than the whole is to be sold; neither is such statute lacking in due process because the effect is to shorten the period of limitation in which actions may be brought by the holders of the title to recover against adverse claimants.³

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Footnotes

¹ [Kentucky Union Co. v. Commonwealth of Kentucky](#), 219 U.S. 140, 31 S. Ct. 171, 55 L. Ed. 137 (1911).

- 2 [King v. Mullins](#), 171 U.S. 404, 18 S. Ct. 925, 43 L. Ed. 214 (1898); [City of Auburn v. Mandarelli](#), 320 A.2d 22 (Me. 1974); [State v. Sponaugle](#), 45 W. Va. 415, 32 S.E. 283 (1898) (holding modified on other grounds by, [State ex rel. Webb v. West Virginia Bd. of Medicine](#), 203 W. Va. 234, 506 S.E.2d 830 (1998)).
- 3 [Kentucky Union Co. v. Commonwealth of Kentucky](#), 219 U.S. 140, 31 S. Ct. 171, 55 L. Ed. 137 (1911).

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Part Ten. Payment and Collection

LI. Methods of Collection and Enforcement

B. Particular Methods or Remedies

§ 765. Collection of excise taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [3257](#), [3258](#)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 245 to 255](#) (Pleadings in actions to enforce excise tax liability)

Payment of excise taxes may be enforced by prohibiting, by injunction or otherwise, the performance of the act that is the subject of the excise unless the tax is paid.¹ The legislature may, without infringing guarantees against imprisonment for debt, make an excise enforceable by fine and imprisonment.² Such taxes may also be collected by summary process, by which the collector may, without judicial formality when an excise is not paid within a specified time, seize and sell so much of the property of the delinquent as is necessary to pay the tax and costs.³

A State may validly require that tribal smokeshops affix tax stamps purchased from the State to individual packs of cigarettes prior to sale to nonmembers of the tribe and keep detailed records of both taxable and nontaxable transactions to assist the State in collecting and enforcing valid general sales and cigarette excise taxes imposed on on-reservation sales.⁴

Footnotes

- 1 State of New Jersey v. Anderson, 203 U.S. 483, 27 S. Ct. 137, 51 L. Ed. 284 (1906); Chain Belt Co. v. City of Milwaukee, 151 Wis. 188, 138 N.W. 621 (1912).
- 2 Rast v. Van Deman & Lewis Co., 240 U.S. 342, 36 S. Ct. 370, 60 L. Ed. 679 (1916); Denver City Ry. Co. v. City of Denver, 21 Colo. 350, 41 P. 826 (1895); Norris v. City of Lincoln, 93 Neb. 658, 142 N.W. 114 (1913); Salt Lake City v. Christensen Co., 34 Utah 38, 95 P. 523 (1908); Austin v. City of Seattle, 176 Wash. 654, 30 P.2d 646, 93 A.L.R. 203 (1934).
- 3 Scottish Union & National Ins. Co. v. Bowland, 196 U.S. 611, 25 S. Ct. 345, 49 L. Ed. 619 (1905); Henry v. Manzella, 356 Mo. 305, 201 S.W.2d 457 (1947).
- 4 Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134, 100 S. Ct. 2069, 65 L. Ed. 2d 10, 29 Fed. R. Serv. 2d 743 (1980).

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Part Ten. Payment and Collection

LI. Methods of Collection and Enforcement

B. Particular Methods or Remedies

§ 766. Criminal sanctions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2831](#), [2868](#), [3232](#), [3563](#), [3712](#)

A.L.R. Library

[Constitutional provision against imprisonment for debt as applicable to nonpayment of tax](#), 48 A.L.R.3d 1324

Unpaid taxes are not ordinarily "debts" within the contemplation of a constitutional provision against imprisonment for debt¹ or if a "debt" under the provision refers only to contractual obligations.² Where the prohibition expressly limits debts to those founded on or arising out of contract, taxes are not included.³ Under the view that the penalty of imprisonment for nonpayment of taxes or license fees upon occupations, privileges, and similar activities is imposed, not for refusal or inability to pay the tax but for violation of a duty imposed upon the taxpayer by the law,⁴ courts may conclude that laws imposing such taxes or license fees may lawfully authorize the imprisonment of those who fail to pay.⁵ Some courts have concluded that "debt" as used in the constitutional prohibition includes income taxes and other taxes not imposed for the pursuit of an occupation or the exercise of a privilege.⁶

Imprisonment for evasion of income taxes or for failure to pay penalties imposed for failure to pay the initial obligation does not come within the applicable constitutional prohibition against imprisonment for debt.⁷ The existence of a tax deficiency is a

necessary element of tax evasion.⁸ The evidence must also show that the taxpayer knew that he or she had a duty to pay taxes and file tax returns and that it was the defendant's conscious object to evade that duty.⁹

A criminal sanction may be imposed for the refusal to permit a tax official's entry onto property.¹⁰

For a taxpayer to be in violation of a statute that provides misdemeanor punishment for any person who, with or without intent to evade state income tax laws, verifies a false or fraudulent return, the taxpayer must lack belief in the return's truth or correctness concerning a "material" matter.¹¹

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Footnotes

- 1 [City of Englewood v. Wright](#), 147 Colo. 537, 364 P.2d 569, 93 A.L.R.2d 1129 (1961); [Gaulden v. Kirk](#), 47 So. 2d 567 (Fla. 1950); [Rosenbloom v. State](#), 64 Neb. 342, 89 N.W. 1053 (1902).
- 2 [State v. Widman](#), 112 Miss. 1, 72 So. 782 (1916).
Such constitutional provisions are discussed in [Am. Jur. 2d, Constitutional Law](#) § 674 to 680.
- 3 [People of City of Detroit v. Pillon](#), 18 Mich. App. 373, 171 N.W.2d 484 (1969); [State v. Thompson](#), 25 S.D. 148, 125 N.W. 567 (1910).
- 4 [Ex parte Marler](#), 1929 OK 407, 140 Okla. 194, 282 P. 353 (1929); [Austin v. City of Seattle](#), 176 Wash. 654, 30 P.2d 646, 93 A.L.R. 203 (1934).
- 5 [Shepherd v. City of Little Rock](#), 183 Ark. 244, 35 S.W.2d 361 (1931); [City of Englewood v. Wright](#), 147 Colo. 537, 364 P.2d 569, 93 A.L.R.2d 1129 (1961); [Gaulden v. Kirk](#), 47 So. 2d 567 (Fla. 1950).
As to imprisonment for failure to pay an excise tax, see § 765.
- 6 [People v. Neal C. Oester, Inc.](#), 154 Cal. App. 2d Supp. 888, 316 P.2d 784 (App. Dep't Super. Ct. 1957); [City of Cincinnati v. DeGolyer](#), 25 Ohio St. 2d 101, 54 Ohio Op. 2d 232, 267 N.E.2d 282, 48 A.L.R.3d 1318 (1971).
- 7 [People of City of Detroit v. Pillon](#), 18 Mich. App. 373, 171 N.W.2d 484 (1969).
- 8 [State v. Eyre](#), 2008 UT 16, 179 P.3d 792 (Utah 2008) (State must show that a tax was, in fact, due and owing; merely establishing income is not sufficient).
Proof of a defendant's tax liability is required as an element of failure to file a tax return where the statute requires a tax return for a person whose "tax liability is" within certain ranges. [State v. Brekke](#), 2005 SD 31, 694 N.W.2d 46 (S.D. 2005).
- 9 [State v. Greenleaf](#), 2004 ME 149, 863 A.2d 877 (Me. 2004) (evidence sufficient; also noting that reliance on professional advice is a defense only if the taxpayer provided the professional with all the relevant facts and followed the advice that was given).
- 10 [State v. Stip](#), 246 N.W.2d 897 (S.D. 1976) (also holding that if property is discovered on the premises that is not listed on the tax assessment, monetary penalties may be imposed).
- 11 [People v. Hagen](#), 19 Cal. 4th 652, 80 Cal. Rptr. 2d 24, 967 P.2d 563 (1998).

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Part Ten. Payment and Collection

LI. Methods of Collection and Enforcement

C. Time for Instituting Proceedings for Collection

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Research References

West's Key Number Digest

West's Key Number Digest, [Limitation of Actions](#)  34(7), 58(6)

A.L.R. Library

A.L.R. Index, Excise Taxes

A.L.R. Index, Income Taxes

A.L.R. Index, Personal Property Tax

A.L.R. Index, Tax Assessors and Collectors

West's A.L.R. Digest, [Limitation of Actions](#)  34(7), 58(6)

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72 Am. Jur. 2d State and Local Taxation § 767

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§ 767. Generally

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West's Key Number Digest

West's Key Number Digest, [Limitation of Actions](#)  34(7)

An attempt to collect taxes several years after they become due does not necessarily affect the right to collect them.¹ Since statutes of limitation do not run against states unless by the terms of the limitation statute it is made applicable to the state,² or against municipal corporations and counties in actions involving their public or governmental rights and duties,³ the existence of a time limit beyond which the government may not sue to recover unpaid taxes therefore depends on some express statute.⁴ Provisions limiting the time for the collection of taxes are strictly construed.⁵

Proceedings to enforce collection of personal property taxes from the property of a decedent are within a statute of limitations governing actions "upon a liability created by statute."⁶ When the statute prescribes a period of limitation applicable to taxes, a promise to pay a tax made by a taxpayer after the expiration of the prescribed period will take the tax out of the operation of the statute and make it enforceable.⁷ On the other hand, even when proceedings to enforce the payment of taxes have been instituted within the statutory period, a long and unexplained delay in prosecuting the proceedings may defeat the State's right to collect the tax.⁸

An amendment to the statute of limitations shortening the period for the government's institution of proceedings to collect taxes does not have a retroactive effect.⁹

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Footnotes

- 1 [Rio Vista Hotel & Imp. Co. v. Belle Mead Development Corp.](#), 132 Fla. 88, 182 So. 417 (1937).
- 2 [Am. Jur. 2d, Limitation of Actions § 70.](#)
- 3 [Am. Jur. 2d, Limitation of Actions §§ 71 to 73.](#)
- 4 [Alascom, Inc. v. North Slope Borough, Bd. of Equalization](#), 659 P.2d 1175 (Alaska 1983) (statute of limitation not an unconstitutional surrender of the power of taxation); [Jensen v. Fordyce Bath House](#), 209 Ark. 478, 190 S.W.2d 977 (1945); [City of Detroit v. Walker](#), 445 Mich. 682, 520 N.W.2d 135 (1994) (general six-year statute of limitations applicable); [In re McMahon's Estate](#), 506 S.W.2d 389 (Mo. 1974) (five-year statute of limitations to collect a tax that is duly assessed; 10-year statute where there has not been a proper assessment); [Flowers v. Lavaca County Appraisal Dist.](#), 766 S.W.2d 825 (Tex. App. Corpus Christi 1989), writ denied, (May 31, 1989) (statute of limitation not an unconstitutional release of a taxpayer's liability); [Graves v. Stone](#), 76 Wash. 88, 135 P. 810 (1913); [Mills v. Henry Oil Co.](#), 57 W. Va. 255, 50 S.E. 157 (1905). City taxes are not subject to a time limitation notwithstanding the fact that the tax liens securing them may have prescribed. [Succession of Caldarera v. Zeno](#), 43 So. 3d 1080 (La. Ct. App. 4th Cir. 2010), writ denied, 50 So. 3d 810 (La. 2010).
- 5 [Jensen v. Fordyce Bath House](#), 209 Ark. 478, 190 S.W.2d 977 (1945); [Rossville Vending Mach. Corp. v. Comptroller of the Treasury](#), 114 Md. App. 346, 689 A.2d 1295 (1997).
- 6 [Bristol v. Washington County](#), 177 U.S. 133, 20 S. Ct. 585, 44 LED 701 (1900).
- 7 [Perkins v. Dyer](#), 71 Md. 421, 18 A. 889 (1889).
- 8 [Robinson v. Bierce](#), 102 Tenn. 428, 52 S.W. 992 (1899).
- 9 [Woods v. TRW, Inc.](#), 557 S.W.2d 274 (Tenn. 1977).

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Part Ten. Payment and Collection

LI. Methods of Collection and Enforcement

C. Time for Instituting Proceedings for Collection

§ 768. When limitation period commences to run

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Limitation of Actions](#) 58(6)

The general principle that time begins to run under statutes of limitation only after the right to prosecute a cause of action to successful conclusion has fully accrued¹ applies to limitation provisions prescribing the time for bringing suits for the recovery of a tax.² Thus, the statute of limitations does not begin to run against an action to collect taxes from the date when the tax becomes due and payable but only from the date when it becomes delinquent.³ Accordingly, the statute of limitations does not begin to run against the enforcement of a tax so long as it is payable without a penalty.⁴

A notice of proposed assessment of additional state income tax is not barred by a time limit in a tax law, where the taxpayers did not report the increased federal taxes owed to the state authorities, in which case the State may collect the taxes at any time,⁵ since the statute does not commence to run if the required return is not filed.⁶

A sister state's cause of action, to enforce its tax warrants against a resident, accrued when the defendant's residency in the forum state began.⁷

A limitations period to sue a taxpayer's surety to recover on a tax bond began to run when the taxpayer's tax debts became due and owing, not when the surety declined to make payment on the bond.⁸

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Footnotes

- 1 Am. Jur. 2d, Limitation of Actions § 127.
- 2 State Tax Commission v. Spanish Fork, 99 Utah 177, 100 P.2d 575, 131 A.L.R. 816 (1940).
A land gains tax assessment was "collectible," and the statute of limitations applicable to an action to collect the tax began to run, on the date of a final judgment on the taxpayers' appeal of the tax determination. Department of Taxes v. Murphy, 178 Vt. 269, 2005 VT 84, 883 A.2d 779 (2005).
- 3 State ex rel. Davidson v. Missouri State Life Ins. Co., 228 Mo. App. 38, 65 S.W.2d 182 (1933); Grant Bond & Mortg. Co. v. Ogle, 17 Tenn. App. 112, 65 S.W.2d 1091 (1933).
- 4 Harrington v. Glidden, 179 Mass. 486, 61 N.E. 54 (1901), aff'd, 189 U.S. 255, 23 S. Ct. 574, 47 L. Ed. 798 (1903); State v. U.S. Exp. Co., 114 Minn. 346, 131 N.W. 489 (1911), aff'd, 223 U.S. 335, 32 S. Ct. 211, 56 L. Ed. 459 (1912).
- 5 Ordlock v. Franchise Tax Bd., 38 Cal. 4th 897, 44 Cal. Rptr. 3d 212, 135 P.3d 628 (2006).
- 6 Gibson v. Levin, 119 Ohio St. 3d 517, 2008-Ohio-4828, 895 N.E.2d 548 (2008).
- 7 New York State Dept. of Taxation and Finance v. Klein, 852 So. 2d 866 (Fla. Dist. Ct. App. 4th Dist. 2003).
- 8 New Jersey Div. of Taxation v. Selective Ins. Co. of America, 399 N.J. Super. 315, 944 A.2d 667 (App. Div. 2008).

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LII. Tax Collectors and Similar Officials

A. Rights, Duties, and Liabilities of Collectors and Sureties with Respect to Remitting Payment

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Forms

[Am. Jur. Legal Forms 2d §§ 238:4 to 238:9](#)

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Forms

[Am. Jur. Legal Forms 2d §§ 238:4 to 238:8](#) (Employment contracts—Tax investigator)

[Am. Jur. Legal Forms 2d § 238:9](#) (Bond of tax official)

A collector is vested with the duty, responsibility, and authority to collect taxes on real property¹ in accordance with a property tax act.² A tax collector must discharge the ministerial duty to collect taxes with promptness and fidelity.³ The tax collector is presumed to have collected all that is on the roll and is prima facie liable for the whole amount of the assessment roll.⁴

If the collector fails to enforce payment within the prescribed time, through a levy by way of distress or execution on the real or personal property, the collector is liable for any lost taxes.⁵ The designation of a person against whom a tax warrant is issued by a wrong name will not excuse the collector's failure to collect the tax where the mistake is too slight to raise any question of identity.⁶

A tax collector's failure to deposit collections monthly with the treasurer is not necessarily a criminal offense.⁷

Observation:

The position of deputy tax collector is a policymaking position, so political affiliation is an appropriate consideration with regard to employment to that position.⁸

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Footnotes

- 1 [Adams v. Friganza, 344 S.W.3d 240 \(Mo. Ct. App. E.D. 2011\)](#), reh'g and/or transfer denied, (July 12, 2011) and transfer denied, (Aug. 30, 2011).
- 2 [Jackson v. Board of Election Com'rs of City of Chicago, 407 Ill. App. 3d 837, 348 Ill. Dec. 486, 944 N.E.2d 439 \(1st Dist. 2011\)](#), appeal allowed, 351 Ill. Dec. 3, 949 N.E.2d 1098 (Ill. 2011).
- 3 [Grenada Bank v. Young, 139 Miss. 448, 104 So. 166 \(1925\)](#).
- 4 [State v. Powell, 40 La. Ann. 234, 4 So. 46 \(1888\)](#); [Oakley Country Club v. Long, 325 Mass. 109, 89 N.E.2d 260, 14 A.L.R.2d 377 \(1949\)](#).
- 5 [Thompson v. Henderson, 155 Md. 665, 142 A. 525, 58 A.L.R. 1213 \(1928\)](#).
- 6 [Thorndike v. Inhabitants of Camden, 82 Me. 39, 19 A. 95 \(1889\)](#).
- 7 [Mhoon v. State, 277 Ark. 341, 642 S.W.2d 292 \(1982\)](#).
- 8 [Regan v. Boogertman, 984 F.2d 577 \(2d Cir. 1993\)](#).

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72 Am. Jur. 2d State and Local Taxation § 770

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Part Ten. Payment and Collection

LII. Tax Collectors and Similar Officials

A. Rights, Duties, and Liabilities of Collectors and Sureties with Respect to Remitting Payment

§ 770. Liability for failure to disburse to entitled government units

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2814](#) to [2817](#), [2824](#), [2825](#), [2827](#)

A county collector is generally subject to liability if the taxes due to a municipality are not properly paid.¹ However, there is also authority that a collector is entitled to the county's sovereign immunity from suit by a local district alleging that county officials failed to assess and collect tax revenues owed to the district when sued only in their official or representative capacities.²

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Footnotes

- ¹ [Ferdinand v. City of East Point](#), 301 Ga. App. 333, 687 S.E.2d 617 (2009) (collector did not preserve point for appeal); [Jackson v. Board of Election Com'rs of City of Chicago](#), 407 Ill. App. 3d 837, 348 Ill. Dec. 486, 944 N.E.2d 439 (1st Dist. 2011), appeal allowed, 351 Ill. Dec. 3, 949 N.E.2d 1098 (Ill. 2011) (statute gives city standing to prosecute a suit against any collector receiving funds for its use).
- ² [St. Matthews Fire Protection Dist. v. Aubrey](#), 304 S.W.3d 56 (Ky. Ct. App. 2009), review denied, (Mar. 10, 2010) (also holding that this is not affected by the requirement that the collector post a bond).

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72 Am. Jur. 2d State and Local Taxation § 771

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Part Ten. Payment and Collection


LII. Tax Collectors and Similar Officials

A. Rights, Duties, and Liabilities of Collectors and Sureties with Respect to Remitting Payment

§ 771. Liability for failure to disburse to entitled government units—Taxes received officially but without authority

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2825](#), [2827](#)

A.L.R. Library

[Estoppel of state or local government in tax matters](#), 21 A.L.R.4th 573

A collector of taxes must pay to the proper authorities all funds collected officially regardless of whether the tax collected was constitutional or whether it was illegal or void or improperly collected.¹ The collector must pay to the government unit for which he or she was acting whatever he or she actually collects as taxes by virtue of the office and may not escape liability for failure to comply with this duty by claiming that the tax is illegal and denying the unit's right to receive it.² The collector is estopped to deny the validity of the tax or the legality of the assessment after collection of the taxes and is accountable for the taxes received.³

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Footnotes

¹ [Oakley Country Club v. Long](#), 325 Mass. 109, 89 N.E.2d 260, 14 A.L.R.2d 377 (1949).

2 [State v. Sunburst Refining Co., 76 Mont. 472, 248 P. 186, 47 A.L.R. 969 \(1926\).](#)

3 [Adams v. Saunders, 89 Miss. 784, 42 So. 602 \(1907\).](#)

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72 Am. Jur. 2d State and Local Taxation § 772

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LII. Tax Collectors and Similar Officials

A. Rights, Duties, and Liabilities of Collectors and Sureties with Respect to Remitting Payment

§ 772. Sureties' liability for deficits in successive years

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2828

Forms

[Am. Jur. Legal Forms 2d § 238:9](#) (Bond of tax official)

When a collector of taxes who has been in office for more than one year is found to be in default and the defalcations cover a number of years, and the collector has given bonds with different sureties for the different terms, a presumption does not arise that all money that the collector paid into the treasury during a particular term were derived from taxes collected during that term when the actual source of the payments cannot be determined; in this situation, the sureties on the collector's bond in force during the year in which the allocation and payments are made, rather than those on the bond in force when the original shortage occurred, are responsible.¹

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¹ [Town of Enfield v. Hamilton](#), 112 Conn. 314, 152 A. 285 (1930).

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72 Am. Jur. 2d State and Local Taxation § 773

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Part Ten. Payment and Collection

LII. Tax Collectors and Similar Officials

A. Rights, Duties, and Liabilities of Collectors and Sureties with Respect to Remitting Payment

§ 773. Liability on bank failure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  [2824](#), [2825](#)

Public officers may be liable for loss of tax money caused by the failure of the bank in which the collector deposited the funds.¹ This rule of liability is generally based on three principal grounds, namely, public policy, statutory provisions defining the officer's duty and responsibility, and the terms of the collector's official bond.²

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Footnotes

- ¹ [National Surety Co. v. Salt Lake County](#), 5 F.2d 34 (C.C.A. 8th Cir. 1925); [People ex rel. Nelson v. West Englewood Trust & Savings Bank](#), 353 Ill. 451, 187 N.E. 525 (1933); [Yawger v. American Surety Co.](#), 212 N.Y. 292, 106 N.E. 64 (1914).
- ² [Rose v. Douglass Tp.](#), 52 Kan. 451, 34 P. 1046 (1893); [Board of Educ. of Village of Pine Island v. Jewell](#), 44 Minn. 427, 46 N.W. 914 (1890); [Maloy v. Board of Com'rs of Bernalillo County](#), 10 N.M. 638, 62 P. 1106 (1900).

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LII. Tax Collectors and Similar Officials

A. Rights, Duties, and Liabilities of Collectors and Sureties with Respect to Remitting Payment

§ 774. Lien of bond

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 2828 to 2830

Forms

[Am. Jur. Legal Forms 2d § 238:9](#) (Bond of tax official)

In some jurisdictions, a tax collector's bond is a statutory lien on the collector's real estate.¹ Subsequent purchasers of real estate from the collector are charged with notice of such a statutory lien and do not acquire a right or interest superior to it.²

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Footnotes

- ¹ [Shields v. Hightower](#), 214 Ala. 608, 108 So. 525, 47 A.L.R. 506 (1926); [Arnold v. Stephens](#), 173 Ark. 205, 296 S.W. 24, 54 A.L.R. 1282 (1927).
- ² [Shields v. Hightower](#), 214 Ala. 608, 108 So. 525, 47 A.L.R. 506 (1926).

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Part Ten. Payment and Collection

LII. Tax Collectors and Similar Officials

B. Duties and Liabilities to Taxpayers

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Estoppel](#) 🔑 62.2(2)

West's Key Number Digest, [Taxation](#) 🔑 2772, 2807, 2824

A.L.R. Library

A.L.R. Index, Tax Assessors and Collectors

West's A.L.R. Digest, [Estoppel](#) 🔑 62.2(2)

West's A.L.R. Digest, [Taxation](#) 🔑 2772, 2772, 2807, 2824

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 252](#)

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72 Am. Jur. 2d State and Local Taxation § 775

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Part Ten. Payment and Collection

LII. Tax Collectors and Similar Officials

B. Duties and Liabilities to Taxpayers

§ 775. Effect of payment and persons who may accept payments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2807

Payment of taxes to the officer authorized and designated by law to collect or receive taxes operates as a complete discharge of the obligation to pay, and further proceedings for the collection of the same tax are invalid.¹ However, long acquiescence by the public officials in the collection of the tax by an officer other than the one designated by law does not estop the State from insisting on the payment of the tax a second time if that officer fails to turn in the money to the treasury.²

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Footnotes

- ¹ [Iredell County v. Gray](#), 265 N.C. 542, 144 S.E.2d 600 (1965).
- ² [State v. Mutual Life Ins. Co. of New York](#), 175 Ind. 59, 93 N.E. 213 (1910); [Iredell County v. Gray](#), 265 N.C. 542, 144 S.E.2d 600 (1965).
- As to the taxpayer's right to recover if this is caused by a failure to present a check, see [§ 779](#).

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72 Am. Jur. 2d State and Local Taxation § 776

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Part Ten. Payment and Collection

LII. Tax Collectors and Similar Officials

B. Duties and Liabilities to Taxpayers

§ 776. Immunity of private collecting agent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2822

A law firm engaged by taxing units for the purpose of performing the governmental function of collecting delinquent property taxes from taxpayers is immune, as a governmental agent for its actions taken while collecting the taxes, from a suit by taxpayers based on the firm's actions taken in the course of accomplishing the governmental act delegated to it by the taxing entities, which enjoy immunity for the same act.¹

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- ¹ [Ross v. Linebarger, Goggan, Blair & Sampson, L.L.P., 333 S.W.3d 736, 265 Ed. Law Rep. 813 \(Tex. App. Houston 1st Dist. 2010\).](#)

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72 Am. Jur. 2d State and Local Taxation § 777

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LII. Tax Collectors and Similar Officials

B. Duties and Liabilities to Taxpayers

§ 777. Estoppel predicated on collector's acts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#)  62.2(2)

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 252](#) (Answer—Defense—By taxpayer—Estoppel and laches)

Some courts hold that the doctrine of estoppel does not apply to state or local governments when either is engaged in the function of assessing or collecting taxes¹ because in so acting, the government unit is acting in a governmental, not a proprietary, capacity.² A State is not estopped by the prior acts or conduct of its agents or employees regarding the determination of tax liabilities or failure to collect a tax.³ Other courts hold that the government may be estopped if its conduct amounts to affirmative misconduct⁴ or where the taxpayer is entitled to, and did, rely on the government's actions, inactions, or representations.⁵ It has also been said that absent unusual circumstances supporting a finding of manifest injustice, the doctrine of equitable estoppel does not apply in taxation cases.⁶

The "doctrine of administrative practice" is a very narrow exception to the rule that estoppel does not generally apply in tax cases; the doctrine applies against a State when the State has interpreted the law in favor of a particular taxpayer in writing,

has adhered to that interpretation over an extended period, but later corrects its interpretation and attempts to assess taxes retroactively in accordance with the new interpretation.⁷

If tax collectors or tax authorities erroneously mark a tax as paid and a third person purchases the land on reliance of that entry, the public body is estopped to assert the failure to pay the tax against the purchaser.⁸ On the other hand, tax officials are not estopped from collecting a tax based solely on their past erroneous failure to do so⁹ or failure to enforce a tax law.¹⁰

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Footnotes

- 1 [Westminster-Canterbury of Hampton Roads, Inc. v. City of Virginia Beach](#), 238 Va. 493, 385 S.E.2d 561 (1989).
- 2 [Comptroller of Treasury, Retail Sales Tax Division v. Atlas General Industries](#), 234 Md. 77, 198 A.2d 86 (1964); [Henderson v. Gill](#), 229 N.C. 313, 49 S.E.2d 754 (1948); [City of Tacoma v. Hyster Co.](#), 93 Wash. 2d 815, 613 P.2d 784 (1980).
As to estoppel against the government, generally, see [Am. Jur. 2d, Estoppel and Waiver](#) §§ 127 to 146.
- 3 [SMRJ, Inc. v. Russell](#), 378 Ill. App. 3d 563, 318 Ill. Dec. 881, 884 N.E.2d 1152 (1st Dist. 2007); [Southwestern Bell Telephone Co. v. Combs](#), 270 S.W.3d 249 (Tex. App. Amarillo 2008), review denied, (Oct. 1, 2010).
- 4 [Farmers' and Laborers' Co-op Ins. Ass'n v. Director of Revenue, State of Mo.](#), 742 S.W.2d 141 (Mo. 1987).
- 5 [Bair v. Estate of Biggins](#), 356 N.W.2d 551 (Iowa 1984) (no showing of reliance); [Brewen v. Leachman](#), 657 S.W.2d 698 (Mo. Ct. App. E.D. 1983) (reliance held justifiable); [Group Health Co-op. of Puget Sound, Inc. v. State Through Dept. of Revenue](#), 106 Wash. 2d 391, 722 P.2d 787 (1986) (reliance not justifiable).
A taxing authority will not be estopped where it is not shown that the authority's action constituted fraud resulting in injustice to the taxpayer and where the taxpayer's reliance on the authority's action or inaction was unjustified. [Rockford Life Ins. Co. v. Department of Revenue](#), 128 Ill. App. 3d 302, 83 Ill. Dec. 470, 470 N.E.2d 596 (2d Dist. 1984), judgment aff'd, 112 Ill. 2d 174, 97 Ill. Dec. 405, 492 N.E.2d 1278 (1986), judgment aff'd, 482 U.S. 182, 107 S. Ct. 2312, 96 L. Ed. 2d 152 (1987).
As to reliance on inaccurate information, see § 778.
- 6 [Winners Garage, Inc. v. Tax Appeals Tribunal of State of New York](#), 89 A.D.3d 1166, 931 N.Y.S.2d 794 (3d Dep't 2011), leave to appeal denied, 18 N.Y.3d 807, 2012 WL 490809 (2012).
- 7 [HealthSouth Corp. v. Levin](#), 121 Ohio St. 3d 282, 2009-Ohio-584, 903 N.E.2d 1179 (2009).
- 8 [Seward v. Fiskens](#), 122 Wash. 225, 210 P. 378, 27 A.L.R. 1208 (1922).
- 9 [Valentine Co. v. Com.](#), 973 A.2d 1101, 246 Ed. Law Rep. 280 (Pa. Commw. Ct. 2009) (surplus lines tax).
- 10 [Stewart Title Guar. Co. v. State Tax Assessor](#), 2009 ME 8, 963 A.2d 169 (Me. 2009) (involving failure to audit or challenge returns for prior tax years); [Southwestern Bell Telephone Co. v. Combs](#), 270 S.W.3d 249 (Tex. App. Amarillo 2008), review denied, (Oct. 1, 2010) (such a failure does not establish an affirmative policy to the contrary).
A county did not waive its right to collect property taxes when it withdrew property from foreclosure based on a significant risk that the county could be exposed to liability substantially in excess of the amount that could be recovered by enforcing the tax lien despite the owner's contention that the withdrawal was an admission of the property's lack of value. [In re Enforcement of Tax Liens ex rel. County of Orange](#), 75 A.D.3d 224, 903 N.Y.S.2d 60 (2d Dep't 2010).

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72 Am. Jur. 2d State and Local Taxation § 778

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Part Ten. Payment and Collection

LII. Tax Collectors and Similar Officials

B. Duties and Liabilities to Taxpayers

§ 778. Estoppel predicated on collector's acts—Erroneous information given to taxpayer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Estoppel](#) 62.2(2)

West's Key Number Digest, [Taxation](#) 2772

A.L.R. Library

[Effect of certificate, statement \(or refusal thereof\), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273](#)

There is some authority that a taxpayer may rely on the representations and acts of the county treasurer, the tax collector, or other authorized officer with respect to taxes due on one's property.¹ However, the taxing authority may not be estopped from collecting taxes where the taxpayer fails to show conclusively that the authority stated that the taxpayer was not liable and that the taxpayer changed position in reliance on the authority's statements.² It is held elsewhere that a State is not estopped by the mistakes or misinformation given by state employees with respect to tax liabilities.³

A mistake in crediting the amount paid may bind the collector.⁴ The refusal of a tax collector to accept payment of taxes tendered, under the erroneous belief that he or she was not at the time entitled to receive them, may not deprive the taxpayer of the statutory right to a rebate for prompt tender or payment of taxes.⁵ Likewise, a city is estopped by a certificate of search for taxes signed and issued by the tax receiver, whose duty it is to certify tax liens against property.⁶

The rule imposing an estoppel does not apply where the scope of the inquiry concerning taxes was distinctly limited or the information given did not purport to be complete, nor where the negligence is on the taxpayer's part, and cannot be attributed wholly to the collector's error.⁷

The government is not estopped by misinformation given by a tax collector or other tax official with respect to taxes assessed where the collector or official does not have the authority to give such information⁸ or in any other way acts outside the scope of his or her authority.⁹

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Footnotes

- 1 [Hintrager v. Mahoney](#), 78 Iowa 537, 43 N.W. 522 (1889); [Kershner v. Sganzi](#), 45 N.M. 195, 113 P.2d 576, 134 A.L.R. 1290 (1941).
- 2 [West Pub. Co. v. Indiana Dept. of Revenue](#), 524 N.E.2d 1329 (Ind. Tax Ct. 1988) (response to inquiry that the taxpayer only conducted sales in the state did not establish that the taxpayer did not owe state gross income taxes).
A department of revenue was not estopped from taxing dues paid by members of golf club as being sales of admissions rather than exempt as membership dues, by the department's prior determination that membership dues paid to another golf club were not taxable, where nothing in the record suggested any action by the department during the prior audit was a false representation or concealment of material facts, or calculated to convey the impression that regulations would be applied in the same way to the current taxpayer, or that the taxpayer was unable to ascertain the truth or falsity of any pertinent representation. [Berrington Corp. v. State Dept. of Revenue](#), 277 Neb. 765, 765 N.W.2d 448 (2009).
- 3 [SMRJ, Inc. v. Russell](#), 378 Ill. App. 3d 563, 318 Ill. Dec. 881, 884 N.E.2d 1152 (1st Dist. 2007).
As to estoppel against the government, generally, see [Am. Jur. 2d, Estoppel and Waiver §§ 127 to 146](#).
- 4 [Schuman v. Person](#), 216 Ark. 732, 227 S.W.2d 160, 21 A.L.R.2d 1269 (1950); [Bray & Choate Land Co. v. Newman](#), 92 Wis. 271, 65 N.W. 494 (1895).
- 5 [Buchanan v. West Kentucky Coal Co.](#), 218 Ky. 259, 291 S.W. 32, 51 A.L.R. 281 (1927).
- 6 [City of Philadelphia v. Anderson](#), 142 Pa. 357, 21 A. 976 (1891); [International Paper Co. v. State](#), 380 S.W.2d 18 (Tex. Civ. App. Texarkana 1964), writ refused n.r.e., (Oct. 7, 1964).
- 7 [Conklin v. Cullen](#), 29 Mont. 38, 74 P. 72 (1903).
- 8 [Ritter v. U.S.](#), 28 F.2d 265 (C.C.A. 3d Cir. 1928); [Westchester Park Associates v. Unmack](#), 123 A.D.2d 494, 507 N.Y.S.2d 94 (4th Dep't 1986).
- 9 [Mayor, Etc., of Savannah v. Standard Fuel Supply Co.](#), 140 Ga. 353, 78 S.E. 906 (1913); [Poole v. City of Lake Forest](#), 238 Ill. 305, 87 N.E. 320 (1909); [Reuter v. Lawe](#), 94 Wis. 300, 68 N.W. 955 (1896).

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Part Ten. Payment and Collection

LII. Tax Collectors and Similar Officials

B. Duties and Liabilities to Taxpayers

§ 779. Liability for failure or delay in presenting check

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2824

The tax collector is personally liable for damages suffered by a taxpayer resulting from a failure to present, or delay in presenting, a check given in payment of taxes.¹ Under a statute providing that where the treasurer has received a check and issued a tax receipt he or she must cancel the receipt if the check is not paid on presentment, and which also requires that the treasurer deposit daily all funds that come into his or her possession, it is the official duty of a treasurer who has received checks in payment of taxes to present the checks for payment within a reasonable time, and if the treasurer negligently fails to do so, and withholds the check from presentation until after the bank fails, and the taxpayer thus is compelled to pay taxes a second time, the treasurer and any surety are liable to the taxpayer for the amount of the duplicate payment.² In the absence of a statutory duty imposed on a tax collector with regard to the disposition of checks received in payment of taxes, the liability of the official bond of a tax collector for the collector's failure to present, or delay in presenting, a check given in payment of taxes, as a consequence of which loss resulted to the taxpayer, will be denied on the ground that it is not within the official powers or duties of a tax collector to accept checks in payment of taxes.³

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Footnotes

- ¹ [Palm Court Corp. v. Smith](#), 103 Fla. 233, 137 So. 234 (1931).
- ² [Kansas Amusement Co. v. Eddy](#), 143 Kan. 988, 57 P.2d 458, 105 A.L.R. 702 (1936).
- ³ [Weidler v. Arizona Power Co.](#), 39 Ariz. 390, 7 P.2d 241 (1932).
As to whether payment may be made by check, see [§ 722](#).

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LIII. Tax Liens

A. General Principles

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Research References

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West's Key Number Digest, [Taxation](#)  [2730](#), [2731](#), [2736](#), [2737](#), [2740](#), [2741](#), [2743](#), [2744](#), [3254](#)

A.L.R. Library

A.L.R. Index, Tax Liens

West's A.L.R. Digest, [Taxation](#)  [2730](#), [2731](#), [2736](#), [2737](#), [2740](#), [2741](#), [2743](#), [2744](#), [3254](#)

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72 Am. Jur. 2d State and Local Taxation § 780

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Part Ten. Payment and Collection


LIII. Tax Liens

A. General Principles

§ 780. Nature and purpose

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2730, 2731

Law Reviews and Other Periodicals

Cords, Lien on me: virtual debtors prisons, the practical effects of tax liens, and proposals for reform, 9 U. Louisville L. Rev. 341 (2011)

The purpose of a tax lien is to allow the land to be taken or sold for failure to pay taxes.¹ Real estate taxes are assessed against real property and constitute an encumbrance on the property on which they are assessed.² The lien attaches to and remains with the property until the taxes are paid.³

Tax liens are not "judgment liens" for the purpose of priority over Internal Revenue Service liens.⁴

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Footnotes

- ¹ [Collector of Taxes of City of Boston v. Revere Bldg.](#), 276 Mass. 576, 177 N.E. 577, 79 A.L.R. 112 (1931).
² [In re Estate of Matthews](#), 409 Ill. App. 3d 780, 350 Ill. Dec. 118, 948 N.E.2d 187 (1st Dist. 2011).

- 3 [Joe Self Chevrolet, Inc. v. Board of County Com'rs of Sedgwick County](#), 247 Kan. 625, 802 P.2d 1231 (1990).
- 4 [In re South Independence, Inc.](#), 256 B.R. 861 (Bankr. E.D. Va. 2000) (Virginia fuel tax).
- As to the priority of federal tax liens, see [Am. Jur. 2d, Federal Tax Enforcement § 251](#).

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72 Am. Jur. 2d State and Local Taxation § 781

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Part Ten. Payment and Collection

LIII. Tax Liens

A. General Principles

§ 781. Statutory basis

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2731

Tax liens, their duration, extent, and priority, are creatures of a state's constitution and statutes.¹ Taxes are not liens even on the property against which they are assessed, unless made so by statute,² and only to the extent that they are expressly made a lien by a statute.³ The lien exists and attaches only according to the terms and conditions prescribed by the statute creating it.⁴

A statute may provide the exclusive means by which a property owner may challenge the form, substantive validity, or calculation of a tax lien.⁵

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Footnotes

- ¹ [Licking v. Hays Lumber Co.](#), 146 Neb. 240, 19 N.W.2d 148 (1945); [State ex rel. Com'rs of Land Office v. Passmore](#), 1941 OK 100, 189 Okla. 232, 115 P.2d 120, 136 A.L.R. 324 (1941); [Board of Com'rs of Big Horn County v. Bench Canal Drainage Dist.](#), 56 Wyo. 260, 108 P.2d 590 (1940).

Tax liens are creatures of statute over which the legislature has plenary authority. [Ritchie v. Salvatore Gatto Partners, L.P.](#), 223 Ariz. 304, 222 P.3d 920 (Ct. App. Div. 1 2010).

As to the priority of tax liens, see §§ 794 et seq.
- ² [International Harvester Cr. Corp. v. Goodrich](#), 350 U.S. 537, 76 S. Ct. 621, 100 L. Ed. 681 (1956); [T. M. Cobb Co. v. County of Los Angeles](#), 16 Cal. 3d 606, 128 Cal. Rptr. 655, 547 P.2d 431, 19 U.C.C. Rep. Serv. 305 (1976); [Linn County v. Steele](#), 223 Iowa 864, 273 N.W. 920, 110 A.L.R. 1492 (1937); [Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat. Bank and Trust Co.](#), 229 Kan. 511, 625 P.2d 494, 31

- U.C.C. Rep. Serv. 379 (1981); *Thompson v. Henderson*, 155 Md. 665, 142 A. 525, 58 A.L.R. 1213 (1928); *Heritage Bank for Sav. v. Doran*, 399 Mass. 855, 507 N.E.2d 690 (1987); *State ex rel. Com'rs of Land Office v. Passmore*, 1941 OK 100, 189 Okla. 232, 115 P.2d 120, 136 A.L.R. 324 (1941).
- 3 *Scavone v. Davis*, 142 Me. 45, 45 A.2d 787 (1946); *Krug v. Hopkins*, 132 Neb. 768, 273 N.W. 221, 110 A.L.R. 1071 (1937).
- 4 *City of Richmond v. Bird*, 249 U.S. 174, 39 S. Ct. 186, 63 L. Ed. 543 (1919); *Scavone v. Davis*, 142 Me. 45, 45 A.2d 787 (1946).
- 5 *Radhames v. Tax Review Bd.*, 994 A.2d 1170 (Pa. Commw. Ct. 2010).

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Part Ten. Payment and Collection

LIII. Tax Liens

A. General Principles

§ 782. Construction of statutes; requirement of strict adherence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2731

Statutes creating tax liens are strictly construed in favor of the taxpayer.¹ The entity claiming a tax lien must strictly adhere to its requirements.² Tax liens may not be extended by implication³ or enlarged by judicial construction.⁴

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Footnotes

- ¹ [Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat. Bank and Trust Co.](#), 229 Kan. 511, 625 P.2d 494, 31 U.C.C. Rep. Serv. 379 (1981).
- ² [Town of Pownal v. Anderson](#), 1999 ME 70, 728 A.2d 1254 (Me. 1999).
- ³ [Scavone v. Davis](#), 142 Me. 45, 45 A.2d 787 (1946); [Collector of Taxes of City of Boston v. Revere Bldg.](#), 276 Mass. 576, 177 N.E. 577, 79 A.L.R. 112 (1931); [A.C. Financial, Inc. v. Salt Lake County](#), 948 P.2d 771 (Utah 1997).
- ⁴ [Linn County v. Steele](#), 223 Iowa 864, 273 N.W. 920, 110 A.L.R. 1492 (1937); [Scavone v. Davis](#), 142 Me. 45, 45 A.2d 787 (1946); [State v. Lawton](#), 25 Wash. 2d 750, 172 P.2d 465 (1946).

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LIII. Tax Liens

A. General Principles

§ 783. Extent of property to which lien attaches

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2736

A tax lien is on the property itself and not on the interest of the person assessed¹ but is coextensive with the taxpayer's interest in the property.²

Unless limited by the state constitution, the legislature may make taxes assessed against particular pieces, kinds, or items of property a lien on all the property of a taxpayer.³ However, unless so declared by statute, a tax lien does not extend to property other than the property against which the tax is assessed.⁴ A tax lien is deemed to create a lien against property other than that against which the tax was assessed only to the extent the other property is expressly or by necessary implication made subject to the lien.⁵

CUMULATIVE SUPPLEMENT

Cases:

Both processes by which a municipality's collector of taxes may take action to preserve or perfect a tax lien, that is, both execution of a tax taking or, less commonly, a tax sale, ensure that the lien will remain on the property regardless of a change in ownership. [Mass. Gen. Laws Ann. ch. 60, §§ 43-45, 53, 54. Tallage Lincoln, LLC v. Williams, 485 Mass. 449, 151 N.E.3d 344 \(2020\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 Merv E. Hilpipe Auction Co. v. Solon State Bank, Solon, Iowa, 343 N.W.2d 452 (Iowa 1984); Collector of Taxes of City of Boston v. Revere Bldg., 276 Mass. 576, 177 N.E. 577, 79 A.L.R. 112 (1931).
Liens for delinquent property taxes attach to the land rather than the person. Tierra Sol Joint Venture v. City of El Paso, 311 S.W.3d 492 (Tex. App. El Paso 2009).
- 2 MGIC Mortg. Corp. v. Bowen, 91 N.M. 200, 572 P.2d 547 (1977).
- 3 Bauman v. Ross, 167 U.S. 548, 17 S. Ct. 966, 42 L. Ed. 270 (1897); Burtkin Associates v. Tipton, 845 P.2d 525 (Colo. 1993); Scottish American Mortg. Co. v. Minidoka County, 47 Idaho 33, 272 P. 498, 65 A.L.R. 663 (1928); State ex rel. Com'rs of Land Office v. Passmore, 1941 OK 100, 189 Okla. 232, 115 P.2d 120, 136 A.L.R. 324 (1941); Union Cent. Life Ins. Co. v. Black, 67 Utah 268, 247 P. 486, 47 A.L.R. 372 (1926).
- 4 Collector of Taxes of City of Boston v. Revere Bldg., 276 Mass. 576, 177 N.E. 577, 79 A.L.R. 112 (1931); Pounds v. Jurgens, 296 S.W.3d 100 (Tex. App. Houston 14th Dist. 2009), review denied, (Oct. 22, 2010).
- 5 Board of Com'rs of Natrona County v. Shaffner, 12 Wyo. 177, 74 P. 88 (1903).

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Part Ten. Payment and Collection

LIII. Tax Liens

A. General Principles

§ 784. Extent of property to which lien attaches—For personal property taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2736

A tax assessed on personal property may be made a charge on other personal property of the owner.¹ Personal property is of such a transitory nature, and the expense and impracticability of resorting to each individual article of personal property for the recovery from it of the tax assessed against it may be so great that, as a practical matter, the State may, by necessity, have to collect all of the taxes assessed against the taxpayer's personal property out of whatever property is available.² Thus, a statutory lien of personal property taxes on the personal property of the person to whom assessed is not confined to the specific article of property assessed but attaches to every variety of personal property, including that subsequently acquired, even where the property would be exempt from levy and sale to satisfy a judgment creditor.³

Statutes may make taxes assessed on account of personal property a lien on the real estate of the person assessed.⁴ In the absence, however, of a statute extending the lien for personal property taxes to real property, land may not be foreclosed under a lien for taxes on personal property, but a personal property tax is a lien only on the owner's personal property unless the statute declares otherwise.⁵ Moreover, if the tax officials fail to follow the procedure outlined by statute to charge a taxpayer's real estate with an uncollected personal property tax, such a tax does not become a lien on the real estate.⁶

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Footnotes

- 1 [Inman v. Farmers Nat. Co.](#), 240 Mont. 182, 783 P.2d 1328 (1989) (noting that tax liens can attach to money);
[Krug v. Hopkins](#), 132 Neb. 768, 273 N.W. 221, 110 A.L.R. 1071 (1937); [MGIC Mortg. Corp. v. Bowen](#), 91
N.M. 200, 572 P.2d 547 (1977) (lien can attach to vendee's interest in a conditional sales contract).
- 2 [International Harvester Cr. Corp. v. Goodrich](#), 350 U.S. 537, 76 S. Ct. 621, 100 L. Ed. 681 (1956); [Scottish
American Mortg. Co. v. Minidoka County](#), 47 Idaho 33, 272 P. 498, 65 A.L.R. 663 (1928).
- 3 [Ryder v. Livingston](#), 145 Neb. 862, 18 N.W.2d 507, 159 A.L.R. 458 (1945); [Chrysler Credit Corp. v. Lee](#),
278 S.C. 565, 299 S.E.2d 488 (1983) (subsequently acquired property).
- 4 [McMillan v. O'Brien](#), 219 Cal. 775, 29 P.2d 183, 91 A.L.R. 383 (1934); [Scottish American Mortg. Co. v.
Minidoka County](#), 47 Idaho 33, 272 P. 498, 65 A.L.R. 663 (1928); [Bibbins v. Clark](#), 90 Iowa 230, 57 N.W.
884 (1894), opinion supplemented on denial of reh'g, 90 Iowa 230, 59 N.W. 290 (1894).
- 5 [Maricopa County v. Trustees of Arizona Lodge No. 2, F. & A. M.](#), 52 Ariz. 329, 80 P.2d 955 (1938); [Union
School Dist. of Guilford v. Bishop](#), 76 Conn. 695, 58 A. 13 (1904).
- 6 [Smith v. Toman](#), 368 Ill. 414, 14 N.E.2d 478, 118 A.L.R. 924 (1938).

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Part Ten. Payment and Collection

LIII. Tax Liens

A. General Principles

§ 785. Time of attachment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2737

A State acquires a tax lien as of a specific date for each year in which a tax bill is issued.¹ The fact that the amount of that lien is unknown on the date when a real estate transaction closes does not abrogate this rule although the vendor and purchaser may contract to allocate responsibility for the unknown tax liability between them.² On the other hand, the prospect of a future tax lien for previously unassessed taxes does not create an encumbrance before the tax is levied.³

Generally, a tax on personal property becomes a lien on that personal property only after a levy or attachment of the personal property taxed.⁴

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Footnotes

- ¹ Rhone v. First American Title Ins. Co., 401 Ill. App. 3d 802, 340 Ill. Dec. 588, 928 N.E.2d 1185 (1st Dist. 2010) (January 1); Van Prooyen Builders, Inc. v. Lambert, 907 N.E.2d 1032 (Ind. Ct. App. 2009), aff'd on reh'g, 911 N.E.2d 619 (Ind. Ct. App. 2009) (March 1); Fox v. Moultrie, 379 S.C. 609, 666 S.E.2d 915 (2008) (beginning of the fiscal year in which the tax is levied).
- ² Van Prooyen Builders, Inc. v. Lambert, 907 N.E.2d 1032 (Ind. Ct. App. 2009), aff'd on reh'g, 911 N.E.2d 619 (Ind. Ct. App. 2009).
- ³ Rhone v. First American Title Ins. Co., 401 Ill. App. 3d 802, 340 Ill. Dec. 588, 928 N.E.2d 1185 (1st Dist. 2010).

4 [Mid-State Service Co., Inc. v. Dunford, 18 N.C. App. 641, 197 S.E.2d 626 \(1973\).](#)

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Part Ten. Payment and Collection


LIII. Tax Liens

A. General Principles

§ 786. Notice and recording

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2730, 2744

The imposition of a tax lien does not violate a taxpayer's right to due process where the taxing authority obtains the lien only after giving the taxpayer notice and an opportunity to be heard.¹

Statutes govern such matters as recording transfers of tax liens.²

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Footnotes

¹ [Ross v. Martin](#), 800 F.2d 808 (8th Cir. 1986) (under Arkansas tax law).

² [Genesis Tax Loan Services, Inc. v. Kothmann](#), 339 S.W.3d 104 (Tex. 2011) (recording of verified copies of transferred tax liens in lieu of originals did not render the tax liens unenforceable).

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LIII. Tax Liens

A. General Principles

§ 787. For excise taxes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  3254

A.L.R. Library

[Validity, construction, and effect of statutory provision for tax lien on property not belonging to taxpayer but used in his business, 84 A.L.R.2d 1090](#)

An excise tax may be made a lien on the property in connection with which the act, privilege, or occupation taxed is performed.¹

Some tax laws may provide that an excise tax may be made a lien on property used in the exercise of the license, occupation, or privilege but not owned by the taxpayer.² Such a provision does not apply where the right to the use of the property during the tax period was acquired prior to the enactment or effective date of the provision.³

The legislature may make a license, occupation, or privilege tax a lien on real property where a business is conducted or property kept even though it is owned by a person other than the person against whom the tax is assessed.⁴ The owner is not only chargeable with a knowledge of the law in that respect but is also presumed to know what business is being conducted there and to have leased the property with knowledge that it might become encumbered by a tax imposed on such a business.⁵ When,

however, the act taxed is one of which an owner not in possession cannot reasonably be expected to have notice, the tax may not constitutionally be made a lien on the real estate.⁶

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Footnotes

- 1 [People of State of New York v. Maclay](#), 288 U.S. 290, 53 S. Ct. 323, 77 L. Ed. 754 (1933) (corporate franchise tax); [Licking v. Hays Lumber Co.](#), 146 Neb. 240, 19 N.W.2d 148 (1945); [Blackrock Copper Min. & Mill. Co. v. Tingey](#), 34 Utah 369, 98 P. 180 (1908).
- 2 [Territory of Alaska v. Craig Enterprises, Inc.](#), 355 P.2d 397, 84 A.L.R.2d 1082 (Alaska 1960); [Johnston & Burnham v. State](#), 95 S.W.2d 144 (Tex. Civ. App. Austin 1936).
- 3 [Territory of Alaska v. Craig Enterprises, Inc.](#), 355 P.2d 397, 84 A.L.R.2d 1082 (Alaska 1960).
- 4 [Hodge v. Muscatine County](#), 196 U.S. 276, 25 S. Ct. 237, 49 L. Ed. 477 (1905); [Mirick v. Gims](#), 79 Ohio St. 174, 86 N.E. 880 (1908); [State v. Rope](#), 419 S.W.2d 890 (Tex. Civ. App. Austin 1967), writ refused n.r.e., (July 24, 1968).
- 5 [Hodge v. Muscatine County](#), 196 U.S. 276, 25 S. Ct. 237, 49 L. Ed. 477 (1905); [Brown Shoe Co. v. Hunt](#), 103 Iowa 586, 72 N.W. 765 (1897); [State v. Rope](#), 419 S.W.2d 890 (Tex. Civ. App. Austin 1967), writ refused n.r.e., (July 24, 1968).
- 6 [Mirick v. Gims](#), 79 Ohio St. 174, 86 N.E. 880 (1908).

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LIII. Tax Liens

A. General Principles

§ 788. Effect of sale or transfer of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2740, 2741

Law Reviews and Other Periodicals

Beavers, Tax lien attached to property transferred in divorce, 41 Tax Adviser 655 (2010)

In the absence of a statutory limitation, the transfer of property subject to a tax lien does not divest the lien if it has been properly perfected.¹

If a tax has become a lien on personal property, one who purchases the property after the lien attaches, whether with or without knowledge of that lien, takes subject to it.² However, a statute may limit the effect of this rule if the sale occurred a certain number of years after the assessment.³

Generally, when a personal property tax is made a lien on the property of the one against whom it is assessed, each article of personal property is burdened with a lien for the entire amount of this tax,⁴ and a purchaser of a part of the property from a tax debtor takes it subject to a charge for the whole tax assessed against the debtor.⁵ The purchaser, however, does not incur personal liability for taxes assessed against the seller.⁶ The lien does not attach to any other personal property that the purchaser

possesses or acquires.⁷ Moreover, the lien is only against the specific property in the purchaser's possession, in the absence of intermingling.⁸

A tax lien does not attach to property a taxpayer purchases with embezzled proceeds where, under applicable state law, embezzlement creates a constructive trust in favor of the defrauded party.⁹

A purchaser of fixtures at a private foreclosure sale properly conducted by a party who had perfected its security interest in the fixtures acquires title free and clear of any asserted right of the county tax collector to seize and sell the property for delinquent taxes where there is nothing to indicate a legislative intent that the collector has the power to enforce a tax lien by seizing and selling the property.¹⁰

Unless otherwise provided by statute, the acquisition of title to land by a State or other government body extinguishes prior tax liens against the property.¹¹ A statute may invalidate tax liens against property when the property is acquired by a county or municipality through a judicial deed.¹²

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Footnotes

- 1 [Smith v. Toman](#), 368 Ill. 414, 14 N.E.2d 478, 118 A.L.R. 924 (1938).
- 2 [Maryland Nat. Bank v. Mayor and City Council of Baltimore](#), 723 F.2d 1138 (4th Cir. 1983); [Matter of Fulton Air Service](#), 254 Ga. 649, 333 S.E.2d 581 (1985), judgment aff'd, 777 F.2d 1521 (11th Cir. 1985); [Kling v. Geary](#), 667 S.W.2d 379 (Ky. 1984); [Wilberg v. Yakima County](#), 132 Wash. 219, 231 P. 931, 41 A.L.R. 184 (1925).
- 3 [Fitzpatrick v. Tri-Mar Industries, Inc.](#), 723 A.2d 285 (R.I. 1999) (sale of property made more than three years after the assessment but before attempted enforcement of the lien blocks enforcement).
- 4 § 801.
- 5 [Minneapolis Threshing Mach. Co. v. Roberts County](#), 34 S.D. 498, 149 N.W. 163 (1914).
- 6 [Faber, Coe & Gregg of Fla., Inc. v. Wright](#), 178 So. 2d 51 (Fla. Dist. Ct. App. 3d Dist. 1965).
- 7 [Faber, Coe & Gregg of Fla., Inc. v. Wright](#), 178 So. 2d 51 (Fla. Dist. Ct. App. 3d Dist. 1965); [Wilberg v. Yakima County](#), 132 Wash. 219, 231 P. 931, 41 A.L.R. 184 (1925).
- 8 [Faber, Coe & Gregg of Fla., Inc. v. Wright](#), 178 So. 2d 51 (Fla. Dist. Ct. App. 3d Dist. 1965).
- 9 [Mervis Industries, Inc. v. Sams](#), 866 F. Supp. 1143 (S.D. Ind. 1994).
- 10 [T. M. Cobb Co. v. County of Los Angeles](#), 16 Cal. 3d 606, 128 Cal. Rptr. 655, 547 P.2d 431, 19 U.C.C. Rep. Serv. 305 (1976).
- 11 [Collector of Taxes of City of Boston v. Revere Bldg.](#), 276 Mass. 576, 177 N.E. 577, 79 A.L.R. 112 (1931); [State v. Locke](#), 29 N.M. 148, 219 P. 790, 30 A.L.R. 407 (1923); [Halvorsen v. Pacific County](#), 22 Wash. 2d 532, 156 P.2d 907, 158 A.L.R. 555 (1945).
- 12 [In re Skidmore](#), 2011 IL App (2d) 100730, 352 Ill. Dec. 300, 953 N.E.2d 981 (App. Ct. 2d Dist. 2011) (bankruptcy trustee's deeds included, even though the deeds were not issued by the bankruptcy court directly, since the sale was a judicial sale conducted under the bankruptcy court's supervision and order).

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72 Am. Jur. 2d State and Local Taxation § 789

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Part Ten. Payment and Collection


LIII. Tax Liens

A. General Principles

§ 789. State's power to extinguish or impair

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2730, 2743

A legislature may abolish a tax lien of any kind that it previously created in its favor or in favor of any subordinate taxing unit unless prevented from doing so by some provision of the state constitution.¹ A constitutional declaration that the power of taxation may not be surrendered, suspended, or contracted away does not preclude the legislature from providing that tax liens created by statute alone are inferior to the liens of mortgages given to the State as security for loans of funds held in trust for public purposes² although a constitutional provision that property may not be released from taxes may prevent the postponement or impairment of a tax lien.³ A tax lien is not, however, an obligation or liability within the meaning of a constitutional provision preventing the release of obligations or liabilities to the State.⁴

The power to extinguish or impair existing tax liens depends on the ownership of the lien by the taxing unit; if the lien has been transferred to a private person, then constitutional provisions that prevent impairing contract obligations preclude legislation impairing or postponing an existing lien transferred to or held by a tax sale purchaser.⁵ After the lien of a tax execution has been transferred according to law and the transfer recorded, the State is precluded by the constitutional guarantee against impairment of the obligation of contract from authorizing a release of part of the property subject to such a lien.⁶

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Footnotes

¹ [State v. Divide County](#), 68 N.D. 708, 283 N.W. 184 (1938).

- 2 State ex rel. Com'rs of Land Office v. Passmore, 1941 OK 100, 189 Okla. 232, 115 P.2d 120, 136 A.L.R. 324 (1941).
- 3 Heisey v. Port of Tacoma, 4 Wash. 2d 76, 102 P.2d 258 (1940).
- 4 Gutierrez v. Middle Rio Grande Conservancy Dist., 34 N.M. 346, 282 P. 1, 70 A.L.R. 1261 (1929).
- 5 State Adjustment Co. v. Winslow, 114 Fla. 609, 154 So. 325 (1934); Morris v. Interstate Bond Co., 180 Ga. 689, 180 S.E. 819, 100 A.L.R. 415 (1935).
- 6 Morris v. Interstate Bond Co., 180 Ga. 689, 180 S.E. 819, 100 A.L.R. 415 (1935).

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Part Ten. Payment and Collection

LIII. Tax Liens

B. Enforcement and Discharge

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Research References

West's Key Number Digest

West's Key Number Digest, [Limitation of Actions](#) 🔑 34(7)

West's Key Number Digest, [Taxation](#) 🔑 2743, 2922 to 2938

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A.L.R. Index, Tax Liens

West's A.L.R. Digest, [Limitation of Actions](#) 🔑 34(7)

West's A.L.R. Digest, [Taxation](#) 🔑 2743, 2922 to 2938

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 125 to 134](#)

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72 Am. Jur. 2d State and Local Taxation § 790

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LIII. Tax Liens

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§ 790. Generally

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2743, 2922 to 2938

Forms

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 125](#) (Complaint, petition, or declaration—To enforce property tax lien—General form)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 126](#) (Complaint, petition, or declaration—For declaration that tax lien invalid and unenforceable)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 127 to 130](#) (Allegations in complaints to foreclose tax liens)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation § 131](#) (Affidavit—Affirming regularity of application to foreclose tax lien)

[Am. Jur. Pleading and Practice Forms, State and Local Taxation §§ 132 to 134](#) (Judgments or decrees in tax lien enforcement actions)

In the absence of an applicable statute of limitations,¹ property to which a lien for taxes has attached is not relieved of that lien until the tax is paid or the property sold for nonpayment of taxes.² A tax lien foreclosure action is only against the property, not the owner,³ and thus is in rem.⁴

A tax lien is presumed valid, and the respondent has the burden of establishing any affirmative defense, procedural defect, or invalidity of the lien.⁵ A property owner's effort to pay taxes that is frustrated by the tax collector's conduct is the legal equivalent of payment and will discharge the lien.⁶ A tax lien may also be extinguished by the foreclosure of a superior tax lien.⁷ Also, a lien on a party's interest in joint tenancy property is extinguished when the party dies, terminating the joint tenancy.⁸ Under proper circumstances, a taxing authority may be barred by res judicata from attempting to foreclose on tax liens.⁹

Partial payment of a tax will not relieve the property assessed from a lien for the balance.¹⁰

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Footnotes

- 1 § 791.
- 2 Lancaster, County of v. Maser, 224 Neb. 566, 400 N.W.2d 238 (1987); L.K. Land Corp. v. Gordon, 1 N.Y.2d 465, 154 N.Y.S.2d 32, 136 N.E.2d 500, 59 A.L.R.2d 1139 (1956); State v. Evans, 79 Utah 370, 6 P.2d 161, 84 A.L.R. 766 (1931).
As to tax sales, see §§ 803 et seq.
- 3 Lot 04B & 5C Block 83 Townsite v. Fairbanks North Star Borough, 261 P.3d 422 (Alaska 2011).
- 4 Tierra Sol Joint Venture v. City of El Paso, 311 S.W.3d 492 (Tex. App. El Paso 2009).
- 5 In re Village Of Fleischmanns, 77 A.D.3d 1146, 909 N.Y.S.2d 564 (3d Dep't 2010).
- 6 Gleason v. Owens, 53 Wash. 483, 102 P. 425 (1909).
- 7 Burton v. City and County of Denver, 99 Colo. 207, 61 P.2d 856, 107 A.L.R. 564 (1936).
- 8 Ladd v. State ex rel. Oklahoma Tax Com'n, 1984 OK 60, 688 P.2d 59 (Okla. 1984).
- 9 Orange County Development Co. v. Orange County Appraisal Dist., 810 S.W.2d 884 (Tex. App. Beaumont 1991) (authority was a party to a prior partition action relating to the same property).
- 10 State v. Evans, 79 Utah 370, 6 P.2d 161, 84 A.L.R. 766 (1931).

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B. Enforcement and Discharge

§ 791. Time limitations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Limitation of Actions](#) 34(7)

West's Key Number Digest, [Taxation](#) 2928

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[Applicability of general statute of limitations to real-estate tax lien foreclosure action, 59 A.L.R.2d 1144](#)

Tax lien statutes may fix a time limit within which steps must be taken to enforce or preserve tax liens, and the failure to comply with those statutes prevents any subsequent enforcement of the lien.¹ On the other hand, an action to foreclose a tax lien might not be subject to any time limitation.²

Where the general statutes of limitation are expressly made applicable to actions by or on behalf of the State, an action to foreclose a real estate tax lien is such an action so that the limitations statute applicable to that type of action governs;³ however, there is authority to the contrary.⁴

Statutes making taxes a lien on the real estate of a taxpayer and providing that such a lien is perpetual or that the lien will remain until the taxes are paid render general statutes of limitation inapplicable to actions to foreclose a tax lien on real estate,⁵

but there is authority to the contrary, especially where the general statutes of limitation are made applicable to actions brought by the State.⁶

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Footnotes

- 1 State ex rel. McGhee v. Baumann, 349 Mo. 232, 160 S.W.2d 697 (1942); Orange County Development Co. v. Orange County Appraisal Dist., 810 S.W.2d 884 (Tex. App. Beaumont 1991).
- 2 NYCTL 1996-1 Commercial Reo, LLP v. El Pequeno Restaurant Food Corp., 1 Misc. 3d 574, 765 N.Y.S.2d 465 (Sup 2003).
- 3 Chatterson v. City of Louisville, 145 Ky. 485, 140 S.W. 647 (1911).
- 4 Whitney v. Morton County Com'rs, 73 Kan. 502, 85 P. 530 (1906); L.K. Land Corp. v. Gordon, 1 N.Y.2d 465, 154 N.Y.S.2d 32, 136 N.E.2d 500, 59 A.L.R.2d 1139 (1956).
- 5 Wells County v. McHenry, 7 N.D. 246, 74 N.W. 241 (1898); City of Port Townsend v. Eisenbeis, 28 Wash. 533, 68 P. 1045 (1902).
- 6 State v. Bellin, 79 Minn. 131, 81 N.W. 763 (1900).

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B. Enforcement and Discharge

§ 792. Necessary parties

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2929

Anyone having any interest in the real property involved must be made a party to the action before one's title of rights may be affected or foreclosed by an action on the tax lien.¹ Thus, absent statutory provisions, a judgment in a tax foreclosure suit to which the real or record owner of the property is not made a party is not binding on that owner, and the purchaser under the judgment does not acquire title against the owner.² A life tenant and the remaindermen,³ heirs of the former owner,⁴ and lienholders⁵ must be made parties to an action for the recovery of taxes, or the foreclosure of a tax lien, to subject their interest to the payment of the taxes or foreclose their interest in the property. Moreover, the holders of special tax bills issued by cities to provide for the cost of special improvements, which constitute liens on the property described in them, are necessary parties in an action to foreclose a general tax lien under a statute requiring that all persons having or claiming to have an interest in the real estate must be made parties defendant in such a foreclosure action.⁶

Local taxing units may not foreclose on property subject to Federal Deposit Insurance Corporation (FDIC) liens without the FDIC's consent.⁷ However, consent is not required where the Resolution Trust Corporation was not the owner of a security interest in the property at the time when tax liens were to be foreclosed but had previously assigned its notes and liens.⁸

Where tax titles are acquired only after an action to enforce or foreclose the lien for delinquent taxes, the action must be brought against the record owner of the land involved.⁹ The rule permitting a suit for taxes against the last record owner if the true owner is not known does not apply where the last record owner is deceased at the time of the commencement of the suit; in such a case, the action must be brought against the heirs.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Holder of unrecorded property interest was not deprived of a statutory or constitutional right to notice of foreclosure proceedings, instituted by county treasurer due to unpaid property taxes, and thus holder was not entitled to relief from judgment of foreclosure; county treasurer satisfied notice requirements under General Property Tax Act (GPTA) by sending notice of delinquent taxes and imminent foreclosure to entity with recorded ownership interest in property and to occupant of property, holder's land contract, which he obtained after paying delinquent taxes on property for tax year four years prior to foreclosure, was not recorded, and holder did not pay annual fee outlined in GPTA that would have entitled him to receipt of notice of foreclosure. [U.S. Const. Amend. 14, § 1](#); [Mich. Const. art. 1, § 17](#); [Mich. Comp. Laws Ann. §§ 211.78a\(4\), 211.78i\(1, 6\)](#). In [re Ingham County Treasurer for Foreclosure](#), 331 Mich. App. 74, 951 N.W.2d 85 (2020).

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Footnotes

- 1 [Burns v. Campbell](#), 131 Fla. 630, 180 So. 46 (1938); [Moore County v. Burns](#), 224 N.C. 700, 32 S.E.2d 225 (1944).
In an action to foreclose a tax lien, all persons having an interest in the equity of redemption should be made parties by name, and a judgment rendered is void as to any person having such an interest who is not made a party. [Beneficial Mortgage Co. of North Carolina, Inc. v. Barrington and Jones Law Firm, P.A.](#), 164 N.C. App. 41, 595 S.E.2d 705 (2004).
A church, which had demonstrated that it had a potential ownership interest in the property, was entitled to intervene in an action to foreclose a tax lien. [NYCTL 1999-1 Trust v. Chalom](#), 47 A.D.3d 779, 851 N.Y.S.2d 211 (2d Dep't 2008).
- 2 [Walker v. Fields](#), 147 Ky. 380, 144 S.W. 74 (1912); [Johnston County v. Stewart](#), 217 N.C. 334, 7 S.E.2d 708 (1940).
- 3 [City of Louisville v. Kohnhorst's Adm'x](#), 25 Ky. L. Rptr. 532, 76 S.W. 43 (Ky. 1903); [Moore County v. Burns](#), 224 N.C. 700, 32 S.E.2d 225 (1944).
- 4 [Guy v. Harmon](#), 204 N.C. 226, 167 S.E. 796 (1933).
- 5 [Burns v. Campbell](#), 131 Fla. 630, 180 So. 46 (1938); [Licking v. Hays Lumber Co.](#), 146 Neb. 240, 19 N.W.2d 148 (1945); [Crandall v. Clemmons](#), 222 N.C. 225, 22 S.E.2d 448 (1942); [Murphee Property Holdings, Ltd. v. Sunbelt Sav. Ass'n of Texas](#), 817 S.W.2d 850 (Tex. App. Houston 1st Dist. 1991).
- 6 [State ex rel. McDowell v. Holcomb](#), 154 Kan. 222, 117 P.2d 591 (1941).
- 7 [Donna Independent School Dist. v. Balli](#), 21 F.3d 100 (5th Cir. 1994).
As to liens on FDIC property, see [Am. Jur. 2d, Banks and Financial Institutions § 1104](#).
- 8 [Hawk v. E.K. Arledge, Inc.](#), 107 S.W.3d 79 (Tex. App. Eastland 2003).
- 9 [Ohlmann v. Clarkson Sawmill Co.](#), 222 Mo. 62, 120 S.W. 1155 (1909).
- 10 [Wengler v. McComb](#), 188 S.W. 76 (Mo. 1916).

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LIII. Tax Liens

B. Enforcement and Discharge

§ 793. Notice or process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2930

A holder of a tax lien must comply with any statutory procedure for sending notice of intent to foreclose,¹ and a judgment foreclosing a tax lien is void with regard to a defendant who was not properly served.² Due process requirements are met where the lienholder fully complied with statutory notice requirements, and there is no evidence that a search of the public record would have yielded any further information regarding the property owner's address.³ A search of certain land records may be sufficient for this purpose, and an Internet search may not be necessary,⁴ but a search of the telephone directory is not sufficient.⁵

CUMULATIVE SUPPLEMENT

Cases:

In order to satisfy statutory notice requirements when seeking to collect or foreclose upon certificate of ad valorem tax delinquency, a third-party purchaser of delinquent tax bills is required to offer proof of standard office mailing procedure designed to ensure notices are properly addressed and mailed by first-class mail, sworn by someone with personal knowledge of business procedure, as well as proof of compliance with that regular business procedure in specific instance. [Ky. Rev. Stat. Ann. § 134.490. Pleasant Unions, LLC v. Kentucky Tax Company, LLC, 615 S.W.3d 39 \(Ky. 2021\).](#)

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Footnotes

- 1 [Advanced Property Tax Liens, Inc. v. Sherman](#), 227 Ariz. 528, 260 P.3d 1093 (Ct. App. Div. 1 2011), review denied, (Jan. 10, 2012) (default judgment vacated where the lien holder continued to attempt to serve the property owners at an address after becoming aware that the address was no longer valid).
The holder of a deed of trust received proper notice of a city's intent to docket a judgment regarding the city's tax lien on the property where the city filed a notice of statutory liens, sent the notice to the holder by certified mail at least 30 days before docketing a judgment, and then waited at least three months following the indexing of the judgment to execute a sale of the property. [Da Dai Mai v. Carolina Holdings, Inc.](#), 205 N.C. App. 659, 696 S.E.2d 769 (2010), appeal dismissed, 364 N.C. 617, 705 S.E.2d 377 (2010).
A sheriff's courtesy letter to a taxpayer stating that "legal process in reference to delinquent property taxes" had been issued, and giving the taxpayer 10 days to respond, did not satisfy statutory requirements for service by mail. [Wilson v. Blount County](#), 207 S.W.3d 741 (Tenn. 2006).
- 2 [NYCTL 1998-2 Trust v. Salem Realty](#), 69 A.D.3d 592, 893 N.Y.S.2d 165 (2d Dep't 2010).
- 3 [In re Foreclosure of Tax Liens by County of Sullivan](#), 79 A.D.3d 1409, 912 N.Y.S.2d 786 (3d Dep't 2010), leave to appeal dismissed, 17 N.Y.3d 787, 929 N.Y.S.2d 86, 952 N.E.2d 1081 (2011).
- 4 [In re Foreclosure of Tax Liens by County of Schuyler](#), 83 A.D.3d 1243, 921 N.Y.S.2d 376 (3d Dep't 2011), leave to appeal dismissed, 17 N.Y.3d 850, 930 N.Y.S.2d 545, 954 N.E.2d 1171 (2011).
- 5 [Wilson v. Blount County](#), 207 S.W.3d 741 (Tenn. 2006).

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Part Ten. Payment and Collection

LIV. Priority of Tax Liens

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Taxation](#) 🔑 2738, 2739

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Part Ten. Payment and Collection

LIV. Priority of Tax Liens

§ 794. General rule of first priority

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2738, 2739

Statutes may make tax liens a first lien on the taxpayer's property, giving them priority over a mortgage or any other lien existing against the property,¹ whether the mortgage or other lien was created before or after the assessment of the tax.²

Provisions that tax liens are not removed until the taxes are paid or the property sold for the payment of those taxes express the legislative intent to give to the State or other taxing body the right to subject the property to the satisfaction of the lien prior to the satisfaction of any other lien or claim against the property whether the other lien or claim exists before the levy of the tax or otherwise.³

CUMULATIVE SUPPLEMENT

Cases:

Under Pennsylvania law, taxes imposed on real property by counties, cities, and school districts are first lien on property, subject only to taxes imposed by the Commonwealth. 53 P.S. § 7103. [In re Biltwood Properties LLC](#), 473 B.R. 70 (Bankr. M.D. Pa. 2012).

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Footnotes

- 1 [Matter of Boerne Hills Leasing Corp.](#), 15 F.3d 57, 89 Ed. Law Rep. 358 (5th Cir. 1994) (applying Texas law); [Walker v. Nogales Building & Loan Ass'n](#), 28 Ariz. 484, 237 P. 1094 (1925); [Rose v. W.B. Worthen Co.](#), 186 Ark. 205, 53 S.W.2d 15, 85 A.L.R. 212 (1932); [ITT Diversified Credit Corp. v. Couch](#), 669 P.2d 1355 (Colo. 1983); [Scottish American Mortg. Co. v. Minidoka County](#), 47 Idaho 33, 272 P. 498, 65 A.L.R. 663 (1928); [Baldwin v. Moroney](#), 173 Ind. 574, 91 N.E. 3 (1910); [Merv E. Hilpiper Auction Co. v. Solon State Bank](#), Solon, Iowa, 343 N.W.2d 452 (Iowa 1984); [Licking v. Hays Lumber Co.](#), 146 Neb. 240, 19 N.W.2d 148 (1945); [First NH Bank v. Town of Windham](#), 138 N.H. 319, 639 A.2d 1089 (1994); [Union Cent. Life Ins. Co. v. Black](#), 67 Utah 268, 247 P. 486, 47 A.L.R. 372 (1926); [Leischner v. Alldridge](#), 114 Wash. 2d 753, 790 P.2d 1234 (1990).
- 2 [Krumpelman v. Louisville & Jefferson County Metropolitan Sewer Dist.](#), 314 S.W.2d 557, 75 A.L.R.2d 1110 (Ky. 1958); [Auditor General v. Bishop](#), 161 Mich. 117, 125 N.W. 715 (1910); [Licking v. Hays Lumber Co.](#), 146 Neb. 240, 19 N.W.2d 148 (1945); [State v. Hi-Lo Foods, Inc.](#), 62 Wash. 2d 534, 383 P.2d 910 (1963).
Statutory general tax liens are superior to later filed mortgage liens, since the tax lien statute clearly and explicitly states that a properly filed tax lien is valid against any purchaser, judgment lien creditor, or holder of security interest, and mortgagees can protect themselves by requiring that tax liens be satisfied prior to lending money, and a professional lender that has actual or constructive knowledge of an earlier recorded general tax lien may not benefit from an equitable reordering of the liens. [Wells Fargo Bank, Minnesota, N.A. v. Com., Finance and Admin., Dept. of Revenue](#), 345 S.W.3d 800 (Ky. 2011), as corrected, (Aug. 25, 2011).
- 3 [Union Cent. Life Ins. Co. v. Black](#), 67 Utah 268, 247 P. 486, 47 A.L.R. 372 (1926).

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Part Ten. Payment and Collection

LIV. Priority of Tax Liens

§ 795. Constitutionality of legislation setting priorities

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2738, 2739

Statutes giving tax liens priority over all other liens and encumbrances are constitutional; indeed, it is essential, to assure that the State can collect its revenue, to make such a tax a paramount lien.¹

A statute declaring tax liens to be superior to other liens against the premises may not constitutionally supersede liens, mortgages, or encumbrances created before the passage of the statute.²

Generally speaking, a provision that property may not be released from taxes prevents the legislature from making tax liens on real property subordinate to other liens.³ However, a constitutional declaration that the power of taxation may not be surrendered, suspended, or contracted away does not prevent the legislature from making tax liens, which it creates, inferior to liens of mortgages given to the State as security for a loan of funds held in trust for public purposes.⁴

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Footnotes

- ¹ [Minneapolis Threshing Mach. Co. v. Roberts County](#), 34 S.D. 498, 149 N.W. 163 (1914).
- ² [City Real Estate v. Sullivan](#), 116 Colo. 169, 180 P.2d 504 (1947); [Minneapolis Threshing Mach. Co. v. Roberts County](#), 34 S.D. 498, 149 N.W. 163 (1914).
- ³ [Kielsen v. Barrett](#), 50 Idaho 466, 297 P. 405 (1931).
- ⁴ [State ex rel. Com'rs of Land Office v. Passmore](#), 1941 OK 100, 189 Okla. 232, 115 P.2d 120, 136 A.L.R. 324 (1941).

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Part Ten. Payment and Collection

LIV. Priority of Tax Liens

§ 796. Necessity for express provision granting priority

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West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2738, 2739

Any priority to which a tax lien is entitled is governed solely by statute.¹ According to some courts, in the absence of a provision of the tax lien statute according priority to a tax lien, such a lien ranks according to the order of its attachment to the land in the same manner as other liens² or does not have inherent priority over other liens.³ Other courts will not give a tax lien preference over prior encumbrances and conveyances in the absence of a clear statement of legislative intent that such a preference be given.⁴ Still, other courts hold that when taxes against a particular piece of property are made a lien on that property, the tax lien has priority over all other liens against the particular property in question, whether attaching before or after the tax lien, even though the statute does not, in express terms, make the tax lien a first or prior lien.⁵ Under this rule, the priority of a tax lien will be implied when the legislative intent to give priority can be gathered from the statute.⁶

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Footnotes

- 1 [In re Cummins](#), 656 F.2d 1262 (9th Cir. 1981).
- 2 [Steinfeld v. State](#), 37 Ariz. 389, 294 P. 834 (1930).
- 3 [Walker v. Nogales Building & Loan Ass'n](#), 28 Ariz. 484, 237 P. 1094 (1925); [Magee v. Whitacre](#), 60 Nev. 202, 106 P.2d 751 (1940).
- 4 [Miller v. Anderson](#), 1 S.D. 539, 47 N.W. 957 (1891).
- 5 [Bosworth v. Anderson](#), 47 Idaho 697, 280 P. 227, 65 A.L.R. 1372 (1929); [Linn County v. Steele](#), 223 Iowa 864, 273 N.W. 920, 110 A.L.R. 1492 (1937); [Morey Engineering & Construction Co. v. St. Louis Artificial Ice Rink Co.](#), 242 Mo. 241, 146 S.W. 1142 (1912).

6 [Dressman v. Farmers' & Traders' Nat. Bank](#), 100 Ky. 571, 18 Ky. L. Rptr. 1013, 38 S.W. 1052 (1897); [Morey Engineering & Construction Co. v. St. Louis Artificial Ice Rink Co.](#), 242 Mo. 241, 146 S.W. 1142 (1912); [Union Cent. Life Ins. Co. v. Black](#), 67 Utah 268, 247 P. 486, 47 A.L.R. 372 (1926); [City of Seattle v. Hill](#), 14 Wash. 487, 45 P. 17 (1896).

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Part Ten. Payment and Collection

LIV. Priority of Tax Liens

§ 797. Perfection to obtain priority

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2738, 2739

Liens for real estate taxes are specific and perfected when nothing remains to be done to make them definite with regard to their amount and the property subject to the liens.¹

A tax lien may be superior to certain other liens on the property, irrespective of when the liens were perfected.² With regard to priority between the property owner and a purchaser of a tax lien, a statute does not either require a race to the courthouse or application of the "first in time, first in right" rule where the property owner has the right to redeem during the redemption period; conversely, a determination of priorities is not required where there was not any evidence that the property owner attempted to pay the delinquent taxes even prior to the expiration of the redemption period.³

Where a personal property tax is not levied against a specific item of personal property, but is in the nature of a lump-sum tax, with a right in the taxing authority to sell so much of the property of the taxpayer as is required to satisfy the tax, the taxing authority has a mere general lien; to make it specific, the authority must take possession of particular property.⁴

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Footnotes

- ¹ [U.S. v. City of New Britain, Conn.](#), 347 U.S. 81, 74 S. Ct. 367, 98 L. Ed. 520 (1954).
- ² [Genesis Tax Loan Services, Inc. v. Kothmann](#), 339 S.W.3d 104 (Tex. 2011).
- ³ [Tacke v. Montana Lakeshore Properties, LLC](#), 2011 MT 197, 361 Mont. 390, 260 P.3d 128 (2011).
- ⁴ [U.S. v. Gilbert Associates, Inc.](#), 345 U.S. 361, 73 S. Ct. 701, 97 L. Ed. 1071 (1953).

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Part Ten. Payment and Collection

LIV. Priority of Tax Liens

§ 798. Liens for personal property taxes over interests in real property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Taxation](#)  2738

Some courts question the legislature's power to give tax liens for taxes on one class of property priority over other liens on property of another entirely distinct class.¹ Other courts regard it as being within the legislature's power to declare taxes assessed on personal property to be a lien on real estate belonging to the owner of the personal property² and also to make such a lien superior to other liens and encumbrances.³

Under statutes that make taxes assessed on account of personal property a lien on the real estate of the person assessed, without declaring in express terms or by necessary implication that such a tax lien has priority over existing liens, the personal property tax lien does not have priority over existing liens or encumbrances on the real estate.⁴

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Footnotes

- 1 [Scottish American Mortg. Co. v. Minidoka County](#), 47 Idaho 33, 272 P. 498, 65 A.L.R. 663 (1928); [Advance Thresher Co. v. Beck](#), 21 N.D. 55, 128 N.W. 315 (1910).
- 2 [§ 784](#).
- 3 [Linn County v. Steele](#), 223 Iowa 864, 273 N.W. 920, 110 A.L.R. 1492 (1937); [Joe Self Chevrolet, Inc. v. Board of County Com'rs of Sedgwick County](#), 247 Kan. 625, 802 P.2d 1231 (1990).
- 4 [Walker v. Nogales Building & Loan Ass'n](#), 28 Ariz. 484, 237 P. 1094 (1925); [Scottish American Mortg. Co. v. Minidoka County](#), 47 Idaho 33, 272 P. 498, 65 A.L.R. 663 (1928); [Bibbins v. Clark](#), 90 Iowa 230, 57 N.W. 884 (1894), opinion supplemented on denial of reh'g, 90 Iowa 230, 59 N.W. 290 (1894); [Miller v. Anderson](#), 1 S.D. 539, 47 N.W. 957 (1891).

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Part Ten. Payment and Collection

LIV. Priority of Tax Liens

§ 799. Over liens of special assessments

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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In the absence of a statutory provision concerning priority between general tax liens and liens for special assessments, a general tax lien, although subsequent in time, is superior to every lien of special assessments.¹

Observation:

The claim for necessary support for the government is a higher obligation than the demands for the cost of local improvements even though the latter have quasi-public features.²

Statutes or constitutions may expressly declare the lien of the state for general taxes paramount and superior to the lien of a special assessment.³ The legislature may make the lien of special assessments of equal dignity with the lien for general taxes or superior to it.⁴ However, every presumption is against the legislative intent to prefer the lien of a special assessment to that of general taxes.⁵ Special assessments are not given priority over liens for general taxes by a provision that they will have priority over all other liens and encumbrances whatsoever notwithstanding that in other sections of the statute, with reference to other kinds of assessments, general taxes are excepted in declaring priority of the assessments.⁶

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Footnotes

- 1 Downing v. City of Russellville, 241 Ala. 494, 3 So. 2d 34 (1941); La Mesa Lemon Grove and Spring Valley Irr. District v. Hornbeck, 216 Cal. 730, 17 P.2d 143 (1932); Reconstruction Finance Corp. v. Deihl, 229 Iowa 1276, 296 N.W. 385 (1941); Board of Com'rs of Big Horn County v. Bench Canal Drainage Dist., 56 Wyo. 260, 108 P.2d 590 (1940).
- 2 La Mesa Lemon Grove and Spring Valley Irr. District v. Hornbeck, 216 Cal. 730, 17 P.2d 143 (1932).
- 3 Bosworth v. Anderson, 47 Idaho 697, 280 P. 227, 65 A.L.R. 1372 (1929); City of Ballard v. Way, 34 Wash. 116, 74 P. 1067 (1904).
- 4 Town of Holbrook v. Koury, 50 Ariz. 526, 73 P.2d 698 (1937); Magee v. Whitacre, 60 Nev. 202, 106 P.2d 751 (1940); Board of Com'rs of Big Horn County v. Bench Canal Drainage Dist., 56 Wyo. 260, 108 P.2d 590 (1940).
- 5 La Mesa Lemon Grove and Spring Valley Irr. District v. Hornbeck, 216 Cal. 730, 17 P.2d 143 (1932).
- 6 Bosworth v. Anderson, 47 Idaho 697, 280 P. 227, 65 A.L.R. 1372 (1929).

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Part Ten. Payment and Collection

LIV. Priority of Tax Liens

§ 800. Between liens of different tax units

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West's Key Number Digest

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Liens for general taxes imposed by the State and by a county, municipality, or other taxing unit of the state are of equal rank¹ regardless of whether the liens were severally for taxes of the same year or for different years.² The lien of a municipality for delinquent municipal taxes is not affected by a sale of the land for delinquent state and county taxes; conversely, a lien for state and county taxes is not affected by a sale for municipal taxes.³ As between taxes assessed by a State and its subdivisions, the law does not give precedence to the taxes of the larger and more important government subdivision in the absence of a statutory direction to that effect.⁴ When one such lien is foreclosed without the other lien being adjudicated, the foreclosed lien is extinguished, and the other lien becomes a paramount lien, and the purchaser of the land on the foreclosure takes it subject to that lien.⁵

Under a statute making property belonging to a municipality exempt from taxation, a city's title to property bought by it at a sale for city taxes, after the expiration of the time to redeem from that sale, is clear of any then-existing lien for state and county taxes; a subsequent sale for state and county taxes to the State and by it to an individual does not convey title.⁶

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- ¹ [State ex rel. McGhee v. Baumann](#), 349 Mo. 232, 160 S.W.2d 697 (1942); [Magee v. Whitacre](#), 60 Nev. 202, 106 P.2d 751 (1940); [County of Lenoir v. Moore](#), 114 N.C. App. 110, 441 S.E.2d 589 (1994), *aff'd*, 340 N.C. 104, 455 S.E.2d 158 (1995) (holding that the state tax lien for unpaid taxes did not have priority over a local ad valorem tax lien).
- ² [Horn v. City of Miami Beach](#), 142 Fla. 178, 194 So. 620 (1940).

- 3 Smith v. City of Arcadia, 147 Fla. 375, 2 So. 2d 725, 135 A.L.R. 1458 (1941).
4 Kentucky Lands Inv. Co. v. Fitch, 144 Ky. 273, 137 S.W. 1040 (1911); Magee v. Whitacre, 60 Nev. 202,
 106 P.2d 751 (1940).
5 Smith v. City of Arcadia, 147 Fla. 375, 2 So. 2d 725, 135 A.L.R. 1458 (1941).
6 Alvis v. Hicks, 150 Miss. 306, 116 So. 612 (1928).

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Part Ten. Payment and Collection

LIV. Priority of Tax Liens

§ 801. Between government units and purchasers of tax liens

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West's Key Number Digest

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A real property tax lien has the same priority, whether held by a municipality or a purchaser of the debt, where a statute, which provides that tax liens have priority over all other obligations for which the property is liable, grants priority to the liens, not the lienholders.¹

Where the holder of state and county tax sale certificates, who is owner and holder of the lien evidenced by those certificates, is not made a party in a suit to foreclose a municipal tax lien, so that all of those liens may all be adjudicated in the suit, a sale of the land under the foreclosure proceedings is subject to the delinquent state and county assessment liens.²

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- ¹ [U.S. Bank Nat. Ass'n v. Tax Ease Lien Investments 1, LLC](#), 356 S.W.3d 770 (Ky. Ct. App. 2011) (holders of tax lien certificates for various years entitled to a pro rata distribution).
- ² [Smith v. City of Arcadia](#), 147 Fla. 375, 2 So. 2d 725, 135 A.L.R. 1458 (1941).

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Part Ten. Payment and Collection

LIV. Priority of Tax Liens

§ 802. Between liens for various taxes

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West's Key Number Digest, [Taxation](#)  2739

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[Liens competing with federal tax priorities as choate or inchoate, 94 A.L.R.2d 748](#)

The legislature, recognizing that ad valorem taxes constitute the principal source of revenue for the operation of municipal and county governments, may give general tax liens priority over liens of inheritance, succession, or income taxes.¹ Some statutes, however, are construed to make the lien of the state for inheritance, succession, and income taxes superior to the lien of tax sale certificates issued for unpaid municipal taxes.²

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Footnotes

- ¹ [City of Winston-Salem v. Powell Paving Co. of N.C., 7 F. Supp. 424 \(M.D. N.C. 1934\); City of Walla Walla v. State, 197 Wash. 357, 85 P.2d 676, 119 A.L.R. 1327 \(1938\).](#)
- ² [Berry-Shilling, Inc., v. Shuster, 122 N.J. Eq. 256, 193 A. 919 \(Ch. 1937\).](#)

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